UNIVERSITY OF PENNSYLVANIA

THE PROBLEM OF WEAK RAILROADS

JAMES M. HERRING

A THESIS

IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

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TO MY WIFE
JOSEPHINE WEAVER HERRING

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FOREWORD

THE establishment and maintenance of a system of transportation adequate to supply the needs of producing and consuming interests throughout the United States must be the central policy of a sound regulatory system. The national Congress, in the Transportation Act of 1920, recognized the importance of such a policy as a guide to the Interstate Commerce Commission and placed upon its shoulders the responsibility of providing in each section of the country the transportation machinery necessary to the economic life of that section. In carrying out such a policy, however, the Commission is faced with many diverse and complex problems. Adequate transportation may not be considered solely from the standpoint of the desires of the users of transportation services. It would be natural for shippers in less developed sections to desire services similar to those received by shippers in more developed sections, yet the payments forthcoming for the services would not be sufficient in many cases to warrant the performance of such services by the transportation agencies. Neither may the problem be considered from the standpoint of the carriers alone. It would benefit many railroads to abandon certain unprofitable mileage which public policy demands shall be continued in operation in the interests of the communities and industries served. The problem thus becomes one of measuring the benefits received from a given transportation service as against the cost of furnishing it.

In attempting to provide adequate transportation for the whole country, Congress and the Commission have been confronted with the fact that there are in the United States many miles of railroad which must be continued in operation, but which are not capable of earning enough to sustain them

in independent operation. The problem constitutes the subject matter of this monograph. The principles embodied in the Act of 1920 are examined in so far as they are concerned with weak railroads, the effectiveness of the machinery set up is tested in the light of nine years of experience, and suggestions are made as to the manner in which that machinery may be better adapted to serve the purposes for which it was designed.

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CHAPTER I

THE RULE OF RATE-MAKING OF 1920

On December 28, 1917, President Woodrow Wilson, by virtue of the authority of an act of Congress, August 29, 1916, issued a proclamation by which the Federal Government assumed the operation of most of the important railroad systems of the United States. The necessity for such a proclamation had arisen from the demonstrated incapacity of railroad managements, operating competing systems, to solve successfully the new and unusual transportation problems occasioned by the entry of the United States into the World War. In the great emergency the railroads had to be operated primarily with a view to the successful prosecution of the war, and such a purpose demanded of railroad managements a greater measure of co-operation than they could effect. However, the Federal Control Act, which established the terms and conditions under which Federal control was to be exercised, provided that such control should continue only during the period of the war and for a reasonable period thereafter, which was not to exceed "one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace."

Long before the expiration of the period set by the Federal Control Act, regulating commissions, members of Congress, railroad executives, shippers, and many other groups interested in transportation problems began to concern themselves seriously with the matter of the ultimate disposition of the railroads of the United States. In general there were three courses of action, any one of which Congress might have followed. Besides the policy of returning the roads to their private owners which Congress finally adopted, government

operation might have been continued, at least for a time, or a policy of outright government ownership and operation might have been adopted. In the hearings which were held by the appropriate committees of both Houses of Congress all three of these plans found many advocates. All interested parties, even those who favored the return of the railroads to their private owners, were convinced that there were certain elements in the transportation situation that needed study and investigation, certain defects in the system of regulation which had prevailed before the Federal Government had taken over the railroads that needed rectifying. It was generally felt that the time had arrived for the adoption of a permanent policy for the regulation of the railroads of the whole United States, and that the aim and purpose of such a policy should be the establishment of an adequate transportation system for the whole country, adequate to furnish the transportation necessary in the public interest, and to move traffic expeditiously.

The most unsatisfactory element in the entire situation was the condition of railroad credit. For a long time it had been apparent, not only to railroad executives, but to the general investing public that railroad credit in general had been on a decline. That condition was revealed before the Senate and House Committees in evidence that could not be refuted. Paul M. Warburg, in an address at the monthly meeting of the Chamber of Commerce of the State of New York, in New York City, February 6, 1919, said that railroad credit had been practically destroyed. Only a few companies felt confident of their ability to sell their obligations in sufficiently large amounts to enable them to provide adequate facilities, and only about ten carriers of importance remained in a position to sell stock at par or above.[1] Daniel Willard, president of the Baltimore and Ohio Railroad,

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[1] Cf. *Hearings on Extension of Government Control of Railroads*, U. S. Senate, 65th Congress, 3rd session, 1918-19, p. 1108.

testified that it was an inescapable fact that since 1910 the clearly established trend of railroad credit in the United States had been steadily downward.[2] Walker D. Hines, then Director General of Railroads, stated that the principal cause of the unfortunate railroad situation was weak railroad credit.[3] Commissioner Woolley, of the Interstate Commerce Commission, maintained that although a few systems like the Pennsylvania, the Burlington, and the Santa Fe, found it possible to do new financing, the majority did not have sufficient credit for more than their barest needs.[4] Thus ran the testimony from numerous sources, testimony that was sufficient to establish beyond doubt that railroad credit was lamentably weak.

The weakness in railroad credit had manifested itself directly in the inability of many roads to provide adequate equipment and facilities for the handling of traffic. In various hearings before the Interstate Commerce Commission from 1910 to 1917 many railroad executives confessed that their railroads were not being maintained to the highest point of efficiency. Necessary improvements like the elimination of grade crossings, construction of new stations and terminal facilities, double tracking, etc., were not being made, the results being congestion and inefficient handling of traffic. Serious car shortages were of frequent occurrence. The conditions had become so grave in the fall of 1916 that the Interstate Commerce Commission made a lengthy investigation and rendered a formal decision January 18, 1917. In this decision the Commission said that the conditions of car distribution at that time had no parallel in the history of our railroads. Cars were not available in some territories for the transportation of staple articles of commerce, such as coal, grain, lumber, fruits, and vegetables. Perishable products of great value had consequently been destroyed

[2] *Ibid.*, p. 1221.
[3] *Ibid.*, p. 933.
[4] *Ibid.*, p. 239.

and hundreds of carloads of food products had been delayed in reaching their natural markets.[5] In a series of rate hearings a few months later it was contended before the Commission that the car shortages were not wholly, if in great part, due to a lack of freight cars. Shortages in motive power and inadequate facilities had played an important part in creating car shortages.[6] It was asserted that many of the railroads had lacked sufficient credit to justify expenditures for new facilities, and that consequently improvements in line and terminal facilities had not kept pace with the demands for transportation service. Conclusive proof of the physical inadequacies of the railroads and of the imperative need of additional permanent facilities and deferred improvements was furnished Mr. McAdoo a little more than a month after the railroads had been taken over by the Federal Government when he called upon the railroad corporations whose lines were under Federal control to prepare and send in budgets of improvements immediately required to increase capacity and efficiency and promote safety in operations. Those budgets aggregated $1,329,000,000 for expenditures chargeable to capital account.[7] However, the failure of the railroads to provide the facilities necessary for an adequate transportation system during the year or two preceding federal control had not been due entirely to weak credit; prices were high, labor was scarce, and financing unusually difficult. During the first year of federal operation providing additional railroad facilities was further complicated by the severe limitations placed upon the use of certain materials for other than war purposes, and in the following year by the uncertainty in the railroad situation due to the approaching end of federal control. Moreover, adequate appropriations were lacking and the railroad com-

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[5] Cf. Statement of W. G. McAdoo, *Hearings on Railroad Revenues and Expenses*, United States Senate, 67th Congress, 2nd session, p. 1705.
[6] *Ibid.*, p. 1708.
[7] *Ibid.*, p. 1713.

panies were unwilling to furnish money for new equipment because of the uncertainty as to their own future.[8] The deficiency in railroad investment was estimated at varying amounts, ranging from three to five billion dollars. Samuel O. Dunn, editor of the *Railway Age,* in a study of such deficiency, showed that the increase in freight and passenger business from June 30, 1915, to October 1, 1919, had been 57 per cent and 32 per cent, respectively, whereas in the ten years ended June 30, 1915, the increase had been 61 per cent and 45 per cent, respectively. In the earlier period new investment in facilities had been $5,300,000,000, and assuming that new investment in the later period should have been proportionate to that in the earlier, the railroads from June 30, 1915, to October 1, 1919, should have added about $5,000,000,000 of new investment. Actually the new investment was less than $1,900,000,000, and this in a time of rising prices.[9]

There was little doubt in the minds of those who appeared before the Senate and House Committees in 1919 that railroad credit was weak and that such a condition was undesirable from the standpoint of public welfare. However, there was substantial disagreement as to the causes responsible for that condition. Important groups contended that the reasons for the decline of railroad credit lay in certain vicious practices in the history of railroad financing. Mr. Warburg, in the address to which reference has already been made,[10] said that the history of American railroads, with few exceptions, abounded in illustrations of "excessive capitalization and of ill-advised construction or purchase of properties at exorbitant prices." In most cases, he said, the security owners had paid for these discrepancies, and that

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[8] Cf. W. D. Hines, Address delivered before the annual convention of the American Mining Congress, St. Louis, Mo., October, 1919.

[9] Cf. S. O. Dunn, "Will New Legislation Cause Railroad Expansion?" *Railway Age,* 67: 735, Oct. 10, 1919.

[10] Cf. *Hearings on Extension of Government Control, supra,* p. 1108.

the average capitalization of all railroads at that time could not be considered excessive, although the process of squeezing out the "water" had not been an even one and had not run its course. Financial dictation in railroad operation was charged by the Interstate Commerce Commission itself in presenting to the Senate Committee its recommendations as to new legislation. Commissioner E. E. Clark, appearing for the Commission, recommended that railway operation be removed from financial dictation. There had been many instances in recent years, he said, in which, through inexcusable financial practices, railroad properties had been bankrupted or saddled with almost overwhelming burdens of indebtedness. These burdens had not improved the service, they had not added to the value of the railroad properties, and they had increased the charges for the service. The records in investigations made and reported upon by the Commission suggested the advisability of adopting some measures by which a transportation line operating under grant of public authority should no longer be a "football of speculation."[11]

It was contended, on the other hand, that the weakness in railroad credit was the result of a niggardly policy with regard to railroad revenues on the part of the Interstate Commerce Commission. Frequently from 1910 to 1917, in a series of cases in which railroads in various sections had appealed for rate advances, it was contended by the carriers that the general level of freight rates yielded them insufficient revenues to maintain their credit. In the so-called *Five Per Cent Case*, concerning an advance in rates in Official Classification territory the carriers demonstrated that from 1907 to 1913 their gross operating revenues had remained fairly stationary while operating expenses had risen and property investment had continued to expand. Thus, net revenues, from which increasing interest and dividend charges had to

[11] *Ibid.*, pp. 235-36, also pp. 295-96.

be met, were being squeezed out between a constant level of gross revenues and a mounting level of expenses. The Commission found that the situation on the whole had been correctly depicted by the carriers, although many factors contributed to a complete explanation of that situation. One cause of the depressed ratio between gross operating revenues and the property investment had been the making of expenditures on capital account for "unproductive" improvements—investments in equipment of improved types, displacing other equipment of equal capacity which had not been worn out, the elevation of tracks and the construction of terminals in cities. Such expenditures, while adding to the value of the service rendered, did not yield proportionate returns in revenue. This ratio had been unfavorably affected, in the second place, by a reduction in gross earnings due to increases in the relative lengths of hauls, and to an increase in the volume of traffic taking low rates. Furthermore, there had been many reductions in freight rates, some voluntarily by the carriers themselves.

The Commission found, however, that the chief cause of railroad difficulties in official territory, in 1914, lay in the fact of declining net earnings. It was found that whereas from 1907 to 1913 the ten most prosperous carriers in the territory had earned an average net operating income of 8.55 per cent on their property investment accounts, the three largest systems (the Pennsylvania, the New York Central, and the Baltimore and Ohio) had earned an average of only 5.16 per cent, and the five New England systems an average of 5.56 per cent, while the seventeen remaining systems of those investigated barely earned 2.15 per cent. The Commission expressed the opinion that the net operating income of these carriers, taken as a whole, was "smaller than is demanded in the interest of both the general public and the railroads."[12] It was further held that the low net

[12] *The Five Per Cent Case*, 31 I. C. C., 351, 384.

earnings were in part due to insufficient gross earnings, and a 5 per cent increase in rates was ordered.

A similar situation with regard to all class I carriers was pointed out to the Senate and House Committees, in 1919. The return on the property investment accounts for all class I carriers, for the years 1908 to 1917, inclusive, as computed by the Commission's own statisticians, was as follows:

Year ended	Ratio of Railway Operating Income to Investment	Year ended	Ratio of Railway Operating Income to Investment[13]
	(per cent)		(per cent)
June 30, 1908	4.89	June 30, 1914	4.12
1909	5.38	1915	4.17
1910	5.68	1916	5.90
1911	4.92	Dec. 31, 1916	6.17
1912	4.69	1917	5.31
1913	5.01		

It was not contended, even by the representatives of the carriers, that the return on the property investment account was an infallible guide to the prosperity of the railroads. It was recognized that in many cases those accounts did not represent the actual situation, but it was pointed out that since 1907 the Commission had had supervisory control over railroad accounts, and that the Commission had often maintained that the return on the investment accounts affords the best available basis of comparison between railroads. The representatives of the carriers contended that the railroads as a whole would have to earn at least 6 per cent on their investment accounts in order to maintain their credit. The failure of the railroads to earn the required amount in every year but one from 1908 to 1917, they said, had been due to insufficient revenues.

Commissioner Clark took exception to the statement frequently made in the hearings that the regulation by the Commission had been niggardly with regard to railroad

[13] Taken from *Thirty-ninth Annual Report of I. C. C.*, p. 79.

revenues. He presented to the Senate Committee on Interstate Commerce a mass of statistics to show that the condition of railroad credit had improved, rather than depreciated, under government regulation. From 1906, the year in which the Commission had obtained a measure of effective control over rates, up to 1917, he said, the increase in revenue of the railroads of the United States had kept pace with increased investment, the operating income had increased more than the increase in the number of miles of road, and the surplus had increased marvelously. Railroad credit had not been destroyed. In the period mentioned the railroads had added about $3,172,000,000 to funded debt, and about $1,940,000,000 at face value, to capital stock. Whatever decline in credit had taken place had been the result of a combination of causes, not the least of which had been the financial practices to which the Commission had referred in its recommendations to the Senate Committee.[14]

Mr. A. P. Thom, counsel for the Association of Railway Executives, reviewing the statistics introduced by Commissioner Clark, showed that they lent themselves to more than one interpretation. Although the period preceding 1910 had witnessed considerable growth in railroad prosperity, he said, since then the situation had materially altered. With the exception of 1913 there was a much lower operating income each year up to 1916 than for 1910, and in each of these years there had been a large addition to investment. In no year after 1910 and before 1916, except 1913, were earnings sufficient to pay the interest and dividends which had been paid, thus necessitating a drain upon income from other sources, from which also the surplus to which Mr. Clark referred had been accumulated. Mr. Thom further contended that inadequate revenues had been responsible for the fact that the railroads of the United States had

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[14] Cf. Statement of E. E. Clark, *Hearings on Extension of Government Control, supra,* p. 251, also pp. 295-96.

passed the danger line with regard to the proportion of stocks to bonds, since more than 60 per cent of the total outstanding securities of the railroads were bonds. From 1910 to 1916 the total funded debt had increased about $1,200,000,000 while the stock had increased only $733,000,000; in other words, the funded debt had increased approximately twice as rapidly as the stock.[15]

The situation to which Mr. Thom called attention was generally felt to be a serious one. With the railroads needing huge sums of new capital each year they could not go on year after year raising that capital by borrowing, because of the menace of disproportionate fixed charges. The fact that investors preferred railroad obligations to stocks was attributable, according to Mr. Thom and many others, to insufficient earnings to pay dividends. The crying need in new legislation, therefore, was that of making provision for adequate railroad revenues. This view was successfully maintained before the Senate Committee. One of the earliest conclusions which that committee reached was that revenues would have to be sufficient to enable the railroads to raise the capital necessary for their transportation purposes, and to raise a large proportion of it through the sale of stock. It was realized that railroads bidding in the open market for capital would come into competition with other industries, and that capital would flow into railroads only on a basis which would compare favorably with the treatment such capital might receive in other fields into which it might go.

Many and widely varying proposals were made to the committees of Congress for the solution of the problem of re-establishing and maintaining railroad credit through adequate revenues. There were many who favored outright government ownership and operation of the railroads of the

[15] Cf. Statement of A. P. Thom, *Hearings on Extension of Government Control, supra,* pp. 487-90.

United States. One such plan, proposed by Glenn E. Plumb, had the backing of the four great railway brotherhoods and of ten other railway labor organizations affiliated with the American Federation of Labor. This plan involved the ownership of the railroad properties by the Federal Government, with government provision for the financing of the acquisition, construction, equipment and working capital of the roads. It was contended by Mr. Plumb that in this way not only could an adequate transportation system be provided, but the capital necessary to maintain it would flow readily into the railroad field. The demands of investors would be fully met when they should obtain complete security with adequate returns. The security offered by a government bond was superior to that which a private corporation could offer, and the guaranty of a government enterprise would assure a stable return to investors. As a consequence, ample capital to maintain an adequate system would not only be attracted to the railroad industry but it would be obtained at less cost than under private ownership.[16]

Former Director General of Railroads, William G. McAdoo, and his successor, Walker D. Hines, suggested that the period of Federal Control be extended five years. They made the proposal, not with the purpose of putting off a day of reckoning, but in full appreciation of the seriousness of the transportation situation. There were many elements in the problem that merited lengthy and exhaustive investigation, and no permanent disposition of the roads should be made until after a full investigation. Furthermore, they contended, the advocates of government ownership were at that time under a disadvantage owing to the deficits incurred during federal operation and they were entitled to have their case heard under more favorable circumstances.

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[16] Cf. Statement of Glenn E. Plumb, *Hearings on Extension of Government Control, supra*, p. 994.

Judgment passed on government ownership as a public policy, based on the accomplishments and failures of war time operation, would be hasty and probably incompetent.

The late Senator A. B. Cummins, in a searching analysis of the railroad problem,[17] pointed out as one of the fundamentals in its solution, that the return upon railroad investments would have to be made ample and certain. Appeal to investors for railroad capital could be made on either of two bases: the promise of high, speculative profits, or of an ample and assured return. It had come to be generally recognized that investors in railroad securities could not expect high and speculative profits, accordingly there was great need that the return be made certain. It was necessary, Senator Cummins said, to remove once and for all one cause of the dispute which had been going on throughout the period of government regulation in the commissions and the courts, in political conventions, and in state and national legislatures over the reasonableness of rates in general. Furthermore, honest investment in railroad properties was entitled to protection and the public to the lowest rates consistent with the necessity of providing an adequate transportation service.

Senator Cummins suggested that the best plan of assuring a stable return upon railroad investments would be for the Federal Government to guarantee an adequate return. This suggestion was made on the theory that if the Federal Government should guarantee a return it could justly reduce that return to a rate of interest which such a government obligation ought to bear. The guaranty, he said, would lower the cost of obtaining railroad capital and would result in a substantial annual saving to the users of railroad transportation. Such guaranty, however, was to apply only upon the return from railroad property as a whole, it was not to apply to the individual railroad properties. Thus, there

[17] *Senate Document No. 19*, 66th Congress, 1st session.

would remain an incentive for the individual road to strive for a good showing, since individually the various railroads would reap the benefits of their efficiency.

Most of those immediately concerned with railroad legislation in 1920, however, regarded with disfavor proposals that involved either government ownership or government guaranty of railroad returns as a permanent policy. Opponents of such proposals contended, in the first place, that railroad positions would become political "plums" and that such a policy would be bound to pollute our political and social life. In the second place, it would deaden railroad initiative and efficiency; it would mean unprogressive and costly operation, resulting in poor service and high rates; as a consequence, whatever saving might occur through the use of the credit of the Federal Government might be more than made up for by the loss resulting from higher costs of operation. Prominent among the opponents of government operation were various organizations of shippers. Mr. Guy M. Freer,[18] appearing before the Senate Committee on Interstate Commerce for the National Industrial Traffic League, a nation-wide organization of shippers, said that the League had adopted resolutions unalterably opposed to government ownership, or long-continued government operation of the railroads.

It early became apparent to the investigating committees that neither government ownership nor direct government guaranty would be expedient, and that overwhelming sentiment prevailed for the return of the railroads to their private owners. However, considering the general testimony as to the weakness of railroad credit, it was evident that the railroads should not be returned to private ownership without some definite provision in the new legislation to remedy that unfortunate condition. The representatives of the carriers ably demonstrated that under the legislation up

[18] Cf. *Hearings on Extension of Government Control, supra*, p. 1184.

to the time of federal operation the rate-making powers of the Commission had been largely limited to the determina- of the reasonableness of individual rates, and that although the Commission had from time to time given heed to the return upon railroad investments when considering the reasonableness of rates in general, as in the *Five Per Cent Case,* it was lacking in power to consider the adequacy of rates from the standpoint of the revenue needs of the carriers. The Commission itself had interpreted its powers as lacking in that respect. In 1911, in a case concerning advanced rates in the Eastern Trunk Line Territory, the justification for the advances presented by the carriers was their need of additional revenue. The cost of operation had so increased that although gross operating income had continued to grow, net operating income had become and was insufficient. With regard to this matter, the Commission said:

> Strictly speaking, this Commission has no jurisdiction to hear and determine that question. We have no authority as such to say what amount these carriers shall earn nor to establish a schedule of rates which will permit them to earn that amount. Our authority is limited to inquiring into the reasonableness of a particular rate or rates and establishing that rate or practice which is found lawful in the place of the one condemned as unlawful.[19]

From such a limited construction of its rate-making powers the Commission soon departed. In the *Five Per Cent Case,* and in the consideration later of many scales of rates the Commission gave weight to the question of the adequacy of rates to provide necessary railroad revenues. Nevertheless, the policy pursued was a halting one, not a confident exercise of power, and it was felt that the law should definitely lay upon the Commission the duty of

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[19] *Advanced Rates in Eastern Trunk Line Territory,* 20 I. C. C., 247, 248.

considering the relationship of the general level of rates to the problem of maintaining railroad credit.

Many plans embodying such a rule of rate-making were submitted to the Senate and House Committees. The National Association of Owners of Railroad Securities presented a plan having as one of its cardinal features that there be established

> A minimum rate of return on the property investment in the railroads, fixed by Act of Congress, through rates adjusted as occasion may demand, in order that the securities of the railroads may be stabilized and their credit established on a basis necessary to secure the money to provide to the shippers and traveling public adequate facilities and service.[20]

The Association of Railway Executives, through its standing committee presented a plan which involved the declaration of a similar policy with regard to rate regulation. This plan proposed that

> The statute itself should provide the rule of rate-making, and should require that rates be not only what has been called reasonable, but adequate and sufficient to enable the carriers to provide safe, adequate, and sufficient service, to protect existing investment, and to attract the new capital necessary in the public interest.[21]

The Interstate Commerce Commission, while not recommending a special rule of rate-making, took the following position with regard to new legislation:

> Transportation service and adequate service are demanded by the welfare, the industry, the commerce and the social life of the whole people. Securing that class of service is more important than is the question of whether it shall be furnished at a slightly higher or a slightly lower charge. An adequate service cannot be provided except from

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[20] *Hearings on Extension of Government Control, supra,* p. 793.
[21] *Ibid.,* p. 310.

> adequate revenues and as a result of adequate expenditures for maintenance, improvement, and expansion. Private capital can not be induced to invest in railroad securities unless it can be reasonably assured of the security of the investment and an appropriate return thereon. It necessarily follows that the patrons of the transportation companies must pay rates that will yield revenues sufficient to justify rendering the quantity and character of the service demanded.[22]

One of the most comprehensive programs for new legislation was that submitted by the National Transportation Conference called by the Railroad Committee of the Chamber of Commerce of the United States. To this conference were summoned representatives of all the principal interests which had been devoting their efforts to a proper solution of the railroad problem. These men listened to the proposals of shippers and manufacturers, of farmers, of financiers, and of railroad employees, with a view to developing a program which would include the most desirable features of all plans. After much deliberation the Conference recommended with regard to rate-making:

> That a statutory rule be enacted by Congress requiring that railroad rates and fares, to be established by public authority, shall be designed to yield the railroad companies in each traffic section of the United States (as shall be designated by federal authority) aggregate revenue sufficient to produce, after proper provision has been made for renewals and depreciation, a net return (which shall be available for interest and dividends) of not less than six (6) per cent per annum upon the aggregate fair value of the property of the railroads devoted to the public service in each of the several sections.[23]

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[22] *Thirty-third Annual Report of the I. C. C.*, 1919, p. 6.

[23] National Transportation Conference, *Program of Railroad Legislation*, Washington, D. C., Oct., 1919, p. 22.

Running through all these plans, and through others submitted, was a recognition of the fact that the need for adequate railroad revenues was such that it could no longer be left to the chances of the system of rate regulation which had prevailed during the period of private operation preceding Federal Control. It was believed that Congress should adopt a definite policy of rate-making which would give to the carriers reasonable assurance of adequate revenues, without involving the Federal Government in a guaranty of earnings and without laying on the public unduly heavy transportation burdens.

After a long series of hearings the Senate Committee drew up a bill containing the rule of rate-making substantially as suggested by the National Transportation Conference. This bill was introduced into the Senate in September, 1919, and, after amendment, was passed on December 20, with the rule unchanged. The House Committee included a similar statement of principle in its measure, although the provisions were not as specific as those in the Senate bill. It provided that in determining the justness and reasonableness of a rate, the Commission should "take into consideration the interest of the public, the shippers, the reasonable cost of maintenance and operation (including the wages of labor, depreciation, and taxes), and a fair return upon the value of the property used or held for the service of transportation." However, the above clause was stricken out of the bill on the floor of the House, and the final House bill contained no rule of rate-making.

Opposition in the House to a rule of rate-making, as suggested in the various plans, was based on the belief that there was an implied or modified form of guaranty involved in such a rule, and that it was as objectionable as a direct guaranty. It was contended that under such a plan the government would assure the holders of railroad securities that the Commission would, under all circumstances and

regardless of fluctuations in traffic, so adjust the rates that they would produce the specified return on the aggregate value of the property. It was further objected that such a plan was unworkable, as well as undesirable. A regulatory commission would find it impossible so to adjust rates that the carriers, year after year, would be enabled to earn a fair return on a fair value. Railroad rates fluctuate, and the fluctuations may be due to drought, or pests, or floods, or to economic causes national or international in scope, matters which are beyond the control of a regulatory commission. Besides, the fixing of a percentage return by act of Congress would introduce undesirable political considerations into railroad regulation. If certain powerful groups should become convinced that the returns fixed by Congress were too high, or too low, the percentage return would become the football of politics, and the standards of reasonableness of rates objects of political strife.

When the conferees met to discuss their differences the House conferees[24] refused to accept the rule of rate-making in the Senate bill. The Senate conferees[25] further helped to deadlock the conference by refusing to accept any measure that did not contain the rule. Railroad regulation, they said, had formerly been only the regulation of unfair discrimination, the time had arrived for the adoption of constructive principles. Meanwhile the conferees were subjected to a great deal of pressure from the outside, especially the Senate conferees. Representatives of 147 shippers' organizations, having a combined membership of more than one million shippers handling livestock, coal, grain, lumber, oil, furniture, brick, dairy products, and various other commodities, aggregating more than 75 per cent of the railroad tonnage for the whole country, addressed a communication to the Joint Conference opposing "any permanent form of a

[24] Representatives Esch, Barkley, Hamilton, Sims, and Winslow.
[25] Senators Cummins, Kellogg, Poindexter, Pomerene, and Robinson.

guaranty of, or limitation upon, the earnings of railway companies." The National Industrial Traffic League also opposed the rule.

The rule of rate-making was a stumbling block over which the conferees labored for many weeks. The Senate conferees held their position, however, and although they had to sacrifice other distinctive features of the Senate bill they forced into the Conference measure statutory recognition of the principle involved, and it was adopted without change by both Houses of Congress in February, 1920. The phraseology of the rule was modified somewhat from that of the original Senate bill but its essentials were included. As written into section 15a of the Interstate Commerce Act it reads:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

Thus was enacted a principle in rate regulation that marks a turning point in the policy of the Federal Government. Regulation was no longer to be confined to the correction of abuses, nor was the test of the reasonableness of rates to be solely the effect upon the shipping public. The Interstate Commerce Commission, in its adjustment of rates in

general, was entrusted with the duty of giving proper consideration to the revenue needs of a railroad system designed to furnish for the people of the whole United States an adequate transportation service.

CHAPTER II

THE WEAK ROAD PROBLEM

The addition of Section 15a to the Interstate Commerce Act gave statutory recognition to principles which were not altogether new. Really two principles were involved: one, the grouping of railroads for rate-making purposes; the other, the consideration of the rate of return upon the investment in railroad properties a measure of the reasonableness of rates in general. As far back as 1909 the Interstate Commerce Commission had recognized the force of these principles. In the Spokane Case there was under consideration the reasonableness of certain rates between Spokane, Washington, and St. Paul, Minnesota. The shippers maintained that the Commission should take the least expensive of the routes serving these two points and determine rates on the basis of the investment in that route. The railroads held that every carrier is entitled to a fair return upon its property and that the Commission should take not the most favorable, because that would deny all others a fair return, but the least favorable. In this case it was held that

> In determining what are reasonable rates between two points neither that railroad which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered. Rates must be established with reference to the whole situation.[1]

In the same decision, with regard to the return upon railroad investments, the Commission said:

> If the present system of private ownership is to be continued, sufficient inducement must be extended to private investors.

[1] *City of Spokane* v. *N. P. Ry. Co.*, I. C. C. 376, 417.

> Capital will seek investment in railways for the same reason that it does in other enterprises, the amount forthcoming depending upon the attractiveness of the investment. . . . . It seems certain that in the immediate future very large sums of money must be expended in improving and extending the railroad facilities of this country, and it is therefore extremely important that railroad investments should be made sufficiently attractive so that the necessary money for these improvements can be obtained.[2]

Again, in the case concerning a proposed rate advance in Eastern Trunk Line Territory[3] in 1911, the Commission grouped the Pennsylvania, the New York Central, and the Baltimore and Ohio in order to judge the reasonableness of rates in this territory. The grouping was not like that required by section 15a, however. These were prominent roads which could be used as a practical device in determining reasonable rates. Section 15a requires the grouping of all roads in a territory whether typical or not typical of the general situation.

The Supreme Court, in the *New England Divisions Case,* has pointed out that the principle of grouping railroads for rate-making purposes did not originate with the Act of 1920:

> For many years before the enactment of the Transportation Act of 1920, it had been necessary from time to time to adjudicate comprehensively upon substantially all rates in a large territory. When such changes were applied for, the commission made them by a single order, and, in large part, on evidence deemed typical of the whole rate structure. . . . . Thus the practice did not have its origin in the group system of rate-making provided for in 1920 by the new section 15a. It was the actual necessities of procedure and administration which had led to the adoption of that method

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[2] *Ibid.*, p. 417.
[3] 20 I. C. C. 243, *supra.*

in passing upon the reasonableness of proposed rate increases.[4]

The necessity of considering railroads as a whole, or in groups, where the question of adequate railroad revenues, as well as reasonable rates to shippers, is involved arises out of a peculiar underlying situation. In many sections of the United States there are railroads competing for the same traffic which under the same schedule of rates demonstrate great disparity in earning power. Some will prosper greatly, some less so; others will struggle along barely able to avoid falling into the hands of receivers. Senator Cummins, in his analysis of the railroad situation in 1919,[5] showed that for the three years 1915, 1916, and 1917, the most prosperous the railroads had experienced up to that time, the class I railroads of the United States, after paying fixed charges, had earned on their capital stock all the way from nothing to more than 100 per cent. In the eastern district, although the average net operating income on the property investment had been 5.21 per cent, 17 class I roads had earned more than 6 per cent on their investment accounts while 38 had earned less than 5 per cent. In the southern district, where the average return had been 5.36 per cent, 4 roads had earned more than 7 per cent, and 21 less than 5 per cent. In the western district the average return had been 5.15 per cent; 3 of 63 class I carriers had earned more than 6 per cent, and 45 less than 3 per cent on their property investment accounts.

If it had been the design of Congress in 1920 that all these roads, operating under such vastly different conditions and circumstances, should have been permitted to earn a fair return on their individual properties, obviously it would have been necessary for the Commission to have adopted separate schedules of rates for the individual carriers. How-

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[4] *The New England Divisions Case*, 261 U. S. 184.
[5] Senator A. B. Cummins, *op. cit.*, pp. 3-6.

ever, no such plan was, or ever can be, practicable. Much of the traffic of the railroads of the United States is competitive traffic, and competitive rates must be the same, otherwise the traffic will move by roads charging the lowest rates. Moreover, on local traffic, the rates must be uniform over considerable areas, since business men on different lines are in competition with each other. It was evident to the members of the investigating committees, in 1919, that if the credit of the railroads as a whole, including those of lesser earning capacity with those of greater, were to be established and maintained this would have to be done under a substantial uniformity of rates throughout a given territory. It was clear also that rates would have to be based on average conditions. To have required the adjustment of rates on the basis of the needs of the carriers whose operating costs are higher than the average would have resulted in giving certain roads an income which the commonest sense of justice would forbid. On the other hand, to have required the adjustment of rates according to the needs of the better than average roads would have resulted in starving roads which must be maintained as essential parts of an adequate national transportation system. It was inevitable, then, that rates should be based on average revenue requirements and that the rates should be made with reference to the total requirements of all roads of a given district, even though from rates thus made some roads would receive more, some less, than a fair return upon their properties. Only in this way would the railroads as a whole, or as a whole in groups, receive the total cost of transportation, and the shippers pay no more than the necessities of an adequate system would require.

Senator Cummins contended, in 1920, that the railroads which might be called weak, in the sense that they were not self-sustaining, carried about 30 per cent of the traffic of the whole country. Many of them were weak because of

heavy capitalization, but in the majority of cases weakness was due to an unfavorable location with regard to traffic, or to unfavorable operating conditions. Representative Black, speaking in the House of Representatives in behalf of the Esch-Cummins bill, held that of the 162 class I railroads or systems studied by Senator Cummins, 109 operated under conditions which come under the head of "less favorably situated," and that these 109 roads had a total mileage of 120,755, serving double the area of territory served by the 53 remaining systems.[6]

There were many, however, who contended, and who do still contend, that weakness in railroads is not solely, not even largely, due to less favorable situation. Mr. John E. Oldham, an investment banker of Boston, Massachusetts, read a paper before the Academy of Political Science in New York City, November 21, 1919, in which he presented with great clarity the problem of weak railroads in the United States. The work done by Mr. Oldham was so comprehensive and exhaustive in nature that his paper was elaborated and published later, under the title of "A Comprehensive Plan for Railroad Consolidation," by the Chamber of Commerce of the United States. Mr. Oldham contended that the number and importance of railroads that are "weak" because "less favorably situated" had been greatly exaggerated, and that other conditions were responsible for the poor showing of many weak railroads. In the course of his study Mr. Oldham made a comparison of the statistics of operation for the "Test Period" (the three years ended June 30, 1917) of 16 recognized strong roads with 16 other large carriers, most of which had not paid dividends in recent years, the 32 systems having an aggregate gross operating income amounting to approximately 60 per cent of the gross operating income of all the railroads in the United States. The comparison showed that these two

[6] *Congressional Record*—v. 69, 66th Congress, 2nd session, p. 3294.

groups of railroads, strong and weak, operated under similar conditions and with remarkably similar results from operation. The two groups carried about the same proportion of freight and passenger traffic; they had a similar tonnage, divided in about the same proportions between products of mines, forests, agriculture, manufactures, and miscellaneous; the rates per ton mile and per passenger mile were about the same for both groups; they spent approximately the same for maintenance; and their track, equipment and terminals were alike in quantity and character. The outstanding difference between these groups of strong and weak carriers lay in the proportion of net income which went to pay fixed charges. The strong roads used about 23 per cent of gross earnings to pay fixed charges and maintain dividends, while the weak roads used 22 per cent for the same purposes. However, the strong roads used only 12 per cent for fixed charges and 11 per cent for dividends, whereas the weak roads used 21 per cent for fixed charges, leaving only 1 per cent for dividends. From a traffic standpoint, Mr. Oldham said, neither of these groups was "more favorably situated" or "less favorably situated." Weakness in the weak group was primarily due to the amount and form of the capitalization.

Summarizing his work for the railroads of the whole United States, Mr. Oldham contended that the roads which handle about 85 per cent of the total traffic do so at such similar costs that the net results of operation are similar for all of them. Of these roads, those which carry 60 per cent of the country's business are able under rates deemed adequate for the system as a whole to pay fixed charges and dividends on the outstanding capital stock, distributing about 80 per cent of their net income about equally divided between fixed charges and dividends. The remaining roads of the 85 per cent group, those which carry about 25 per cent of the total traffic, likewise distribute 80 per cent of net income, but practically the whole of it goes to pay fixed charges.

Thus, the railroads whose costs of operation or whose locations with regard to traffic are such as to prevent them from obtaining similar net incomes handle not more than 15 per cent of the total traffic of the country.[7]

The conclusion following logically from Mr. Oldham's study is that, except for the financial problems of certain large carriers, the problem of weak roads is a problem primarily of the short lines, which include a few class I carriers with earnings of less than $10,000,000 a year, and the class II and class III carriers. This was the contention made by representatives of the short lines in 1920, and which has been made by them repeatedly since that time in various hearings on railroad consolidation. The short lines, many of them, operate under great disadvantages as compared with their strong competitors. Some were built originally to serve mining or logging operations. They prospered along with such industries, but often found themselves unable to develop sufficient traffic in the territory served to sustain them when the major source of traffic had declined or disappeared altogether. Yet their continued operation had become essential to the communities which had grown up about them. Others have operating handicaps, such as excessive grades, sharp curves, poor tracks and light equipment which they have not been able to replace because of insufficient credit. Furthermore, most of the short lines suffer under a permanent disadvantage in that they cannot induce new industries and institutions to locate on their lines when those same industries are able to obtain better services and greater assurances of permanent transportation facilities by locating on larger, stronger systems.

Both the Senate and the House Committees, in framing railroad legislation in 1919, fully appreciated the necessity of making some provision for weak, necessitous carriers.

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[7] Cf. Memorandum submitted to the I. C. C., Nov. 1923, by John E. Oldham, quoted from *Hearings on S. 2224,* 68th Congress, 1st session, p. 51.

The adequate transportation system which they hoped to establish and maintain would have to include more than the strong carriers, more even than the larger weak systems whose problems were mainly financial; it would have to include most of the railroad mileage of the United States. As Senator Cummins expressed it, the great general public had the right to ask of its government such a system of regulation as would give to each community "the transportation upon which its life, its growth, its development depends."[8] It was also quite generally recognized that the most difficult problem to be faced in providing for such a system was the problem of maintaining the transportation service of the short and weak lines.

Various plans were suggested for the solution of the weak road problem, and many of them merited and received lengthy consideration. None of them, however, proposed that the weak carriers be placed in a position to maintain themselves in independent operation, since fixing rates to enable them to do so would give to their strong competitors an unreasonably high rate of return and would result in much higher freight rates than the necessities of the situation would demand. Mr. E. J. Rich,[9] presenting the so-called "New England Plan," suggested that any railroad which could not sell its stock at par should be permitted to appeal to the Federal Government for the guaranty of new loans to raise capital to provide the services necessary to the territory served. The credit of weak roads would thus be established by government guaranty of loans, and in return the Federal Government should have control over the use of such funds and be represented on the boards of directors of roads whose loans should be thus guaranteed. Such a

[8] Cf. A speech delivered in the Senate by Sen. Cummins, Nov. 4, 1919, quoted by Dr. C. S. Duncan, *Hearings on H. R. 11212*, 69th Congress, 1st session, p. 15.

[9] Mr. Rich, formerly general counsel for the Boston and Maine Railroad, appeared before the Senate Committee for the Associated Industries of Massachusetts.

plan, it was suggested, besides affording possibilities of better and cheaper transportation service to the communities served by the weak carriers, presented an immediate solution which could be put into operation without involving the railroads in difficulties at a time when they would be faced with numerous problems attendant upon the return to private ownership.

Senator Cummins, in a report to the Senate from the Senate Committee on Interstate Commerce, on November 10, 1919, said that government ownership and operation of the railroads was one way by which provision for the continuance, the betterment and growth of weak carriers might be made, but in the judgment of the committee such a plan was attended with so many disadvantages that it would have to be discarded. In the absence of government ownership there was but one other solution—it was consolidation. So long as there should remain in competition with each other railroads with great disparity in earning power the problem of adjusting rates to maintain an adequate transportation system would be difficult, if not impossible, to solve. The Committee therefore determined in favor of the gradual unification of all the railroads of the United States into not less than 20 nor more than 35 systems, and that in such grouping the rule should be observed that the systems should be so arranged that operating under a uniform schedule of rates in competition with each other, they would be able to earn approximately the same rate of return on their respective properties held for and used in the service of transportation.

Consolidation as a permanent policy found favor in both the Senate and the House of Representatives. The Senate bill included a provision that such a policy not only be adopted but that consolidation be made compulsory after a period of seven years, if during that time the railroads should not have been consolidated voluntarily by the carriers themselves in accordance with the purposes of the act, but

that provision was lost in conference. Many objections to the adoption of a policy of consolidation had been raised during the hearings held by the two committees. It was feared that a more or less artificial grouping of railroads would interfere with existing channels of trade and commerce and would stifle competition. Any substantial lessening of competition between carriers, it was widely held, would be fraught with evil both from the standpoint of service and of rates. Although impressed with the potency of these objections a large majority of the members of Congress believed that consolidation of weak roads with strong roads into a limited number of systems of equal earning power represented the only practicable solution for the problem of adjusting the general level of rates so as to keep the weak carriers running without giving to the more fortunate properties excessive incomes. Consequently, there was incorporated into the Act of 1920 a definite mandate to the Interstate Commerce Commission that it should "as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems." These systems were to be so arranged that "the cost of transportation as between competitive systems and as related to the values of the properties" should be the same, so that these systems could "employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

The adoption by Congress of a consolidation program was not necessarily giving recognition to a new and untried policy. In the several traffic sections of the United States consolidations had already been effected which had resulted in systems reaching from end to end of such territories, sharing in the varied business of the different parts, and experiencing varied operating conditions, both favorable and unfavorable. Mr. Oldham had pointed out the similarity

between the operating statistics of the Pennsylvania and the New York Central in official territory, and had held that the similarity in operating results between these systems, and between the larger, typical systems in other territories was not a matter of chance but of design. The policy of Congress was designed to further development along clearly defined lines which previous experience had demonstrated to be of advantage to the railroads and to the public, with the added purpose of sustaining weak carriers which were essential parts of an adequate transportation system.

Although there was widespread sentiment, at the time, in favor of a consolidation program, not even the most enthusiastic supporters of such a program believed that it could be accomplished immediately. Many years would elapse before the completion of the consolidations contemplated. Meanwhile, the Commission would be under the obligation of initiating rates adequate to provide for transportation needs in general, which rates, in the inevitable distribution of earnings, would give to some carriers very high returns, and to others returns consistently below the level necessary for them to provide adequate facilities for an increasing transportation service. Both the National Transportation Conference and the National Association of Owners of Railroad Securities suggested that Congress place a limit to the earnings which any individual carrier should be entitled to under rates designed to produce adequate revenues for the railroads as a whole, or as a whole in certain groups which might be established. In the plans of these two organizations it was suggested that a net return above 6 per cent per annum on a fair valuation of the carrier's property be considered an excess return. The two plans, however, differed as to the method of determination of a fair value, and as to the disposition of excess earnings above a fair return.

The real genesis of the plan followed by Congress in dealing with this particular situation, although many of its

provisions were not adopted, is found in the suggestion of the Association of Railroad Security Owners. The proposal was made that if any railroad should earn in any one year a net return in excess of 6 per cent on the value of its property Congress should provide that such excess be set apart and divided as follows: one-third for the benefit of railroad employees, one-third for the railroad itself, and one-third to be used for transportation purposes in general, especially to provide funds for carriers with weak credit. There was, however, considerable opposition manifested to any limitation of railroad earnings and to appropriation of so-called "excess" earnings by the government. The carriers contended that the rates prescribed in the first instance by the Commission would be reasonable rates, and the carriers would be entitled to all that they could earn under them. To deprive them of any portion of such earnings would be to take away their rightful property in an unconstitutional manner. Further objection to such a plan was raised, both by carriers and by shippers, because of its probable effect upon the transportation service. It was contended that railroads whose earnings were such that a portion would be subject to recapture would be without a proper incentive to economical operation, and that consequently the service would deteriorate and the costs of transportation rise.

Congress was not unmindful of the force of such objections to the limitation of railroad earnings. However, the majority of congressmen realized that the public would not tolerate the high returns which some railroads would receive under rates designed to maintain the entire system, especially since the Commission was to adjust rates with that end in view. Furthermore, the excess earnings above a fair return on individual railroad properties would provide a sort of equalization fund from which the weak roads might be provided with capital which, because of their weak credit position, they could not obtain by other means, and thus be maintained as parts of the national transportation system.

Consequently, Congress incorporated into the Transportation Act of 1920 the so-called "recapture" clauses, the principal features of which are expressed in the following language:

> In as much as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.
>
> If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. . . . .
>
> The general railroad contingent fund so to be recoverable by and paid to the commission and all accretions thereof shall be a revolving fund and shall be administered by the commission. It shall be used by the commission in furtherance of the public interest in railway transportation either by making loans to carriers to meet expenditures for capital account or to refund maturing securities

> originally issued for capital account, or by purchasing transportation equipment, and facilities and leasing the same to carriers, as herinafter provided. . . . .

The policy here outlined by Congress involved the limitation of the earnings of individual railroads in the interest of transportation in general. It was not intended to be an absolute limitation, however. A railroad having excess earnings was to be permitted to retain one-half of such excess because it was considered necessary in the interests of efficient and economical operation. The other half was to be used primarily in helping weak carriers provide necessary facilities.

The constitutionality of the recapture provisions was contested by the railroads in *Dayton-Goose Creek Ry. Co.* v. *U. S.*, 263 U. S. 456. This case involved an appeal from a decree of the District Court of the United States for the Eastern District of Texas, dismissing a bill to restrain the enforcement of an order of the Interstate Commerce Commission requiring the surrender of excess earnings. The Dayton-Goose Creek Railway Company was the sole complainant, but nineteen other railway companies, as *amici curiæ*, filed briefs in support of its appeal. In this case the Supreme Court not only upheld the constitutionality of the limitation placed on railroad earnings, but declared that the recapture clauses are the key provisions in the plan of rate-making inaugurated by the Act of 1920. With regard to the limitation of earnings the court said:

> The carrier owning and operating a railroad, however strong financially, however economical in its facilities, or favorably situated as to traffic, is not entitled, as of constitutional right, to more than a fair net operating income upon the value of its properties which are being devoted to transportation. By investment in a business dedicated to the public service the owner must recognize that, as compared with investment in private business, he

> cannot expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit.[10]

And further, as to the contention of the carriers that cutting down the income actually received by a carrier for the performance of a service is appropriation of its property without compensation:

> The statute declares the carrier to be only a trustee for the excess over a fair return received by it. Though in its possession, the excess never becomes its property, and it accepts custody of the product of all the rates with this understanding. It is clear, therefore, that the carrier never has such a title to the excess as to render the recapture of it by the government a taking without due process.[11]

In the course of the decision the court construed at length the purposes of the rate-making provisions of the Transportation Act of 1920. Up to 1920, the court said, interstate commerce legislation had been designed primarily to prevent unreasonable or discriminatory rates, but the act of that year had added a new and important object to previous legislation. The new act sought "affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country." It sought to accomplish that purpose through the proper adjustment of rates. But rates would have to be uniform, and under uniform rates sufficient to sustain all the roads in a group some railroads would earn more, some less, than a fair return on their properties. Those carriers which earn more are to hold the excess "primarily to preserve their sound economic condition and avoid wasteful expenditures and unwise dividends," while those which earn less are to be given help by credit secured through a fund made up of recaptured excess earnings. Hence, the court said:

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[10] *Dayton-Goose Creek Ry.* v. *U. S.*, 263 U. S. 456, 481.
[11] *Ibid.*, p. 484.

> By the recapture clauses Congress is enabled to maintain uniform rates for all shippers and yet keep the net returns of railways, whether strong or weak, to the varying percentages which are fair respectively for them. The recapture clauses are thus the key provision of the whole plan.[12]

In summary, the great central policy of the Transportation Act of 1920 was a constructive one. It had as its objective the establishment of an adequate transportation system for the whole country, first by providing adequate revenues for the railroads as a whole, or as a whole in rate groups, through the level of rates, and second by making specific provision for railroads that were not self-sustaining. Weak roads were ultimately to be consolidated with strong roads into a limited number of systems of approximately equal earning power and the problem of initiating rates to sustain the entire system in the presence of individual roads with greatly differing earning capacities was to be simplified, if not completely solved. The territories served by weak carriers were thus to be ultimately assured of transportation. In the meantime, while the consolidation program was being worked out, the capital necessary to enable the weak carriers properly to furnish transportation services was to be provided from a fund contributed by the users of transportation for the maintenance of an adequate system—a fund collected from individual railroads in the form of excess earnings to which they had never obtained a title.

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[12] *Ibid.*, p. 480.

CHAPTER III

VALUATION FOR RECAPTURE

The program of railroad legislation adopted in 1920 represents a noteworthy attempt on the part of Congress to establish a constructive and forward-looking policy with regard to railroad regulation. However, certain parts of the regulatory machinery then set up have failed to function as the framers of the act had hoped they would function. The recapture clauses especially have not been effective. Designed primarily to provide a fund from which the weak carriers were to be given aid during the process of consolidation, they have been of no service to such carriers. The amounts of excess earnings actually paid over to the Commission have been small, and the fund thus accumulated has not been available for the purposes contemplated in the act. The most important single cause of the failure of the recapture clauses to function has been the lack of a proper basis for the calculation of excess earnings.

The railroads have been making their reports of excess earnings largely on the basis of a balance-sheet value as expressed in their property investment accounts. The investment accounts have been repeatedly suggested as indicative of the value of railroad properties. When the question of fair value came up in connection with the rule of rate-making in 1920 both the National Transportation Conference and the National Association of Owners of Railroad Securities proposed that the investment accounts of the carriers be used, at least until the Commission had finally determined such value. The railroads themselves have consistently contended that those accounts in the aggregate, if not in individual cases, approximate fair value. Such claims are made on the basis of the fact that since 1907 these accounts

have been under the supervision of the Commission. An amendment to the Interstate Commerce Act, June 29, 1906, gave to the Commission authority to establish and require the keeping of uniform accounts by all the carriers subject to the act, and within a short time there were set up, with the aid of the Association of American Railway Accounting Officers, detailed accounting rules covering operating expenses, operating revenues and expenditures for road and equipment. With the promulgation later of orders for a uniform system of financial accounts, and the classification of expenditures for additions and betterments, a general system of uniform accounts was established which gave to the Commission control over railroad accounting practices.

The Commission's supervision of railroad accounts since 1907 has been of such a nature that there is at present little suspicion attached to the accounts set up since that time. However, many of the roads were in existence long before the Commission received the power to supervise their accounts. Often these accounts, when originally set up, were not much more than journal entries to balance the par value of securities which had been issued. There was absolutely no uniformity of practice among the railroads in keeping them. Conservative managements had swelled the actual value of the investment, without its appearing in the investment accounts, by charging the cost of additions and betterments to operating expense. On the other hand, less honest, or less fortunate managements had permitted the original plant to wear out without changing the assets. In 1908, the Commission spoke in no uncertain terms of the weaknesses in the property-investment accounts. In its annual report for that year it said:

> No court, or commission, or accountant, or financial writer would for a moment consider that the present balance-sheet statement purporting to give the "cost of property" suggests, even in a remote

> degree, a reliable measure either of money invested or of present value.[1]

In 1920 Congress recognized the infirmities in the property-investment accounts of railroads. The duty of determining the value of railroad property for rate-making and for recapture purposes was placed upon the Commission with the following provisions in paragraph 4 of section 15a:

> The Commission may utilize the results of its investigations under section 19a of this act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes.

Congress contemplated that ultimately the value for rate-making and recapture purposes should be the value determined by the Commission pursuant to the provisions of section 19a of the act to regulate Interstate Commerce. Section 19a had been added to the act in March, 1913, to provide for a physical valuation of all railroad property in the United States. There was no definite statement of the purposes for which such valuation was to be made in the Valuation Act. The law merely provided that the final valuations should be published and should constitute "prima facie evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the act." In the Act of 1920 Congress specified that such valuations, when completed, should constitute the bases for calculations in rate-making and recapture.

The task assigned the Commission by the Valuation Act was one of huge proportions. The Commission was required to ascertain and report in detail as to each piece of property

[1] *Twenty-second Annual Report* of the I. C. C., 1908, p. 85.

of the carriers subject to the act: (1) the original cost to date, (2) the cost of reproduction new, and (3) the cost of reproduction less depreciation. It was further required to submit an analysis of the methods by which each of these several costs had been obtained, and the reasons for differences between them. With regard to lands the Commission was required to report in detail and separately from improvements "the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." Finally, the Commission was instructed to report separately "other values, and elements of value," and an analysis of the methods used in arriving at such values.

Within the 60 days required by the law, the Commission established a separate division of valuation and work was begun as soon as possible thereafter to carry out the provisions of the law. It was decided that the United States be divided into five districts, each embracing about 50,000 miles of railroad, and that in each district a single railroad should be selected for the initial work, one whose maps were in fairly good condition and which was thought to offer a variety of problems. The roads selected were:

District	Road	Length[2] (Miles)
Eastern	Norfolk-Southern	900
Southern	Atlanta, Birmingham & Atlantic	600
Central	New Orleans, Texas and Mexico	175
Western	Texas Midland	122
Pacific	San Pedro, Los Angeles & Salt Lake	1,000

The first tentative valuation served under the Act of March, 1913, was that of the Texas Midland Railroad, served on the carrier on October 21, 1916. From that time

[2] *Twenty-eighth Annual Report* of the I. C. C., 1914, p. 62.

on tentative valuations have been served on the various carriers as the underlying accounting, engineering, and land reports have been completed. In its annual report for the year 1928 the Commission announced that the service of all tentative valuation reports upon the steam railroads had been completed, but up to December 1, 1928, final valuations, after hearings upon the tentative valuations, had been reached in only 715 cases, covering 79,314 miles of railroad.[3] Manifestly there still remains a vast amount of basic valuation work to be done by the Commission. Moreover, when the final valuations shall have been ascertained by the Commission those valuations may be, and many of them probably will be, contested in the courts, consequently a long period of time may be expected to elapse before the valuation work under section 19a will have been completed. In the meantime the work has cost both the government and the railroads huge sums of money. From June 30, 1913, to December 31, 1927, the Commission spent $30,128,970, and the railroads $106,372,541, a total of $136,501,511 for valuation purposes.[4] The magnitude of the problem can be best appreciated by a consideration of the actual investigations the Commission has been called upon to make.

The determination of original cost to date has been impossible in most cases because of a lack of accounting records, and the diversity of accounting practices before the Commission prescribed uniform accounts. The methods of treating construction expenses varied with the different companies, so that when the Commission turned to these accounts for figures as to original cost it was found that they did not set forth correctly or adequately the cost of construction of the different parts of the railroads.[5] The Commission has construed original cost to mean "primarily

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[3] *Forty-second Annual Report* of the I. C. C., 1928, p. 57.

[4] Cf. Slason Thompson, *Railway Statistics of the U. S. for 1927*, Bureau of Ry. News and Statistics, Chicago, Ill., p. 94.

[5] *Texas Midland R. R.*, 75 I. C. C. 1, 10.

the actual cost of construction or acquisition, or, in other words, the actual original cost of the property to the carrier at the time of its initial dedication to public use."[6] Original cost has been reported as fully as it can be determined with certainty, but the Commission has refused, except within comparatively narrow limits, to include estimates. If the actual cost of all the property of a railroad cannot be determined, the Commission reports the cost of such property as can be determined, and supplements it in other sections of the report by a full statement of the financial history of the carrier, including the issuance of securities. Also, while the act does not require the Commission to ascertain and report the investment in road and equipment, the Commission often does so to throw additional light upon the original cost which it has not been able to determine. The Commission does not, however, regard the investment account as the full equivalent of original cost to date.[7]

It has been consistently maintained by various railroads, on the other hand, that original cost to date is ascertainable. One carrier[8] argued that the sum included as the recorded investment represented its original cost. In 1923 the National Conference on Valuation[9] submitted a petition to the Commission requesting that every tentative valuation proceeding then pending be recommitted to the Bureau of Valuation for the purpose, among others, of ascertaining the original cost to date of each piece of property owned or used by a common carrier, costs which the Commission had refused to report because they would have involved a number of more or less important estimates. Commissioner Potter, while concurring with the majority of the Commission in denying the prayer to remit the proceedings, did not concur

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[6] *New York, Philadelphia & Norfolk R. R. Co.*, 97 I. C. C. 273, 275.
[7] *Charleston & Western Carolina Ry.*, 121 I. C. C. 721, 722.
[8] *Augusta Northern Ry.*, 125 I. C. C. 14, 15.
[9] The National Conference on Valuation was a voluntary organization formed in May, 1923.—See *Petition of National Conference on Valuation*, 84 I. C. C. 9.

in the reasons for its action. "The majority," he said, "assumes that there is difficulty and takes far too seriously the burdens of finding original cost. Like most impossible tasks, it can be done. We are not directed to report book entries. We are to investigate and report a conclusion, and we are not relieved from that task if some one has made it more difficult by destroying records. We arrive at our conclusion the same way we arrive at other conclusions—by using the best competent evidence that is available. Where cost is the question and records are not available, evidence as to what the cost should have been is always competent. An estimate may, in fact, be much more reliable than a book entry of actual payment."[10]

The majority of the Commission, however, have interpreted their duties with regard to finding original cost as fact-finding ones and have refused to include estimates. In the Texas Midland case, at page 165, it was held that "an attempt to estimate original cost would in many cases involve not the exercise of good judgment but rather of pure speculation." Original cost to date, hence, has been reported only in part, the Commission believing that the reporting of the amounts that can be exactly determined, with supplemental information, constitutes as "full and substantial compliance with the requirements of the act" as it can "reasonably make."[11]

With regard to the cost of reproduction new the Commission has proceeded upon a definite theory. The road is assumed not to be in existence, but all other conditions are taken as they exist on valuation date. The engineer then prepares what he conceives to be the "most practicable and economical program" for the construction of the road as it exists in operation on the valuation date. He tries to conceive of an entirely new venture without facing the uncertainties that were faced in the original construction.

[10] *Ibid.*, pp. 14-15.
[11] *Charleston & Western Carolina Ry. Co., supra,* p. 724.

Materials for reproduction of the road come from the most available present source and are transported by present transportation means. Present, and not original, topographical conditions govern reproduction, and allowances for contingencies are largely governed by what is known at the valuation date. Uniform prices for all reproduction estimates are then applied to the quantities which make up the physical property, to these sums are added the estimated cost of placing the items in position as of the valuation date, including certain overhead charges, and the result arrived at is the cost of reproduction new.[12]

The above method of estimating cost of reproduction new was attacked by the Minnesota Railroad and Warehouse Commission on the grounds that such a method was prohibited by the Supreme Court in the Minnesota Rate Cases. There the Court had said:

> Moreover, it is manifest that an attempt to estimate what would be the actual cost of acquiring the right-of-way, if the railroad were not there, is to indulge in mere speculation. The railroad has long been established; to it have been linked the activities of agriculture, industry, and trade. Communities have long been dependent upon its service, and their growth and development have been conditioned upon the facilities it has provided. The uses of property in the communities which it serves are to a large degree determined by it. The values of property along its line largely depend upon its existence. It is an integral part of the commercial life. The assumption of its nonexistence, and at the same time that the values that rest upon it remain unchanged, is impossible and can not be entertained. The conditions of ownership of the property and the amounts which would have to be paid in acquiring the right-of-way, supposing the railroad to be removed, are wholly beyond reach of any process of reasonable determination. The cost-of-reproduction method is of service in ascertaining

[12] *Texas Midland R. R., supra*, p. 11.

> the present value of the plant, when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of results which depend upon mere conjecture. [13]

The Minnesota Commission asserted that the term "plant" had been used advisedly by the Court for the purpose of condemning that particular method of determining cost of reproduction, not only of the land but of all other property of a railroad. The Interstate Commerce Commission did not accept the view of the Minnesota Commission. In its opinion the language of the court related to "railway rights of way, yards, and terminals, and not to railroad property other than land."[14] For land the Valuation Act had made special provision, but estimating the cost of reproduction new of a railroad, the Commission said, can mean nothing more nor less than that "a railroad actually being operated is conceived of as non-existent and then theoretically brought into existence by a succession of steps well known to competent engineers."[15] The Commission has accordingly compiled its estimates of cost of reproduction new along the plan outlined, and has included such estimates in its tentative valuation reports. Most of the items included in such estimates, however, have been the subject of controversy between the railroads and the Commission, and much time has been consumed in holding hearings on the disputed points. Under the Commission's method of valuation the reported cost of reproduction new represents the estimated cost of physical property determined by the application of unit prices[16] to actual quantities or units in use on valuation date.[17]

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[13] *Minnesota Rate Cases*, 263 U. S. 352, 452.
[14] *Texas Midland R. R., supra*, pp. 12-13.
[15] *Ibid.*, p. 14.
[16] Unit prices are fixed for all cost of reproduction estimates as of June 30, 1914, based on averages for the 5 or 10 years preceding.
[17] *Death Valley R. R.*, 103 I. C. C. 27, 28.

In addition to reporting the cost of reproduction new of each piece of property, the Valuation Act required the Commission to report the cost of reproduction of such property less depreciation. The railroad property after having been reproduced new, is then conceived of as being worn to the age and condition of the existing road and equipment.[18] The Bureau of Valuation of the Commission has treated depreciation as the "exhaustion of capacity for service." Of the capacity for service which existed in a piece of property when new it has inquired how much has been used up, has subtracted this from the cost of reproduction new, giving due consideration to salvage or scrap when it exists, and has reported the remainder as the cost of reproduction less depreciation.[19]

Various carriers have insisted that this conception of depreciation is wrong, that the inquiry should be whether the property is being operated 100 per cent efficiently. So long as its efficiency is 100 per cent, so long as there is no deferred maintenance, there can be no depreciation.[20] The carriers have asserted that "until units of property are replaced in the routine of normal maintenance, they serve every function that new units would serve, and the railroad as a whole is no less valuable because of the age of some of the units so long as it is normally maintained."[21] In other words, although there may be depreciation in a single, simple unit of property, a railroad is composed of multitudes of such units all at different stages of depreciation. It is a composite unit and if each individual unit is replaced at the proper and most economical time there is no depreciation in the composite unit.

In the Texas Midland case the Commission discussed fully its theory with regard to cost of reproduction less

[18] Homer B. Vanderblue, *Railroad Valuation*, Harvard University Press, 1920, p. 39.
[19] *Texas Midland R. R., supra*, p. 48
[20] *Ibid.*
[21] *Chicago & Illinois Midland Ry. Co.*, 119 I. C. C. 202, 210.

depreciation. At the time the Valuation Act was passed, the Commission said, the phrase "cost of reproduction less depreciation" had come to have a clearly defined meaning. Valuators and utility commissioners had universally adopted the view that depreciation means decline in value due to loss of capacity for service. Moreover, the Supreme Court of the United States had declared in the Knoxville case:

> The cost of reproduction is one way of ascertaining the present value of a plant like a water company, but that test would lead to obviously incorrect results if the cost of reproduction is not diminished by the depreciation which has come from age and use.[22]

And in the Minnesota Rate Cases:

> The depreciation in question is not that which has been overcome by repairs and replacements, but is the actual existing depreciation in the plant as compared with the new one.[23]

The Commission gathered from these and other statements of the Court that depreciation and deferred maintenance were not synonymous. Depreciation had acquired a definite meaning, a meaning which it must be assumed Congress was cognizant of when it used "depreciation" in connection with the cost of reproduction in the Act of March 1, 1913. There was, consequently, both legislative and judicial authority for deducting depreciation, as construed, from cost of reproduction to derive its cost-of-reproduction-less-depreciation estimates. Such estimates have been included in the valuation reports.

The Valuation Act required with regard to land that the reports made by the Commission

> shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a

[22] The I. C. C. quoting from *Knoxville* v. *Water Co.*, 212 U. S. 1, 9-10, in *Texas Midland R. R., supra*, p. 49.
[23] *Minnesota Rate Cases, supra*, p. 457.

> common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

In attempting to determine the original cost of land the Commission has experienced much the same difficulty that it has with the original cost of other property. The records of the carrier, county and municipal records, court deeds, and other sources of information have been consulted, but in cases in which it could not be shown what the carrier did actually pay for the lands no estimate has been made. As a consequence, statistics of the original cost of carrier lands have not been complete, and the Commission has refused to supplement them with estimates, on the theory that attempts to make such estimates would involve not the "exercise of good judgment but rather of pure speculation."[24]

Present value of railroad lands, as determined by the Commission, is "nearly synonymous with market value."[25] To the acres of carrier lands are applied prices corresponding to the value of similar land adjoining or in the immediate vicinity, consideration being given to land which has a special value for transportation purposes.

One of the chief controversial points between the carriers and the Commission in the early valuation proceedings was the matter of reporting the excess cost of condemnation and damages or of purchase over the original cost or present value of lands. In its valuation reports up to 1920 the Commission had refused to include estimates of such excess on the ground that the question involved was as to the cost to a particular railroad of procuring its right of way at the present time if it were obliterated and were obliged to reacquire its lands, and that such estimates would depend "upon considerations and elements which the Commission can by no possibility

[24] *Texas Midland R. R., supra*, p. 167.
[25] *Ibid.*

determine with accuracy."[26] In thus refusing to follow the mandate of the Valuation Act the Commission was relying upon the declaration in the Minnesota Rate Cases, that the making of such estimates would involve "mere speculation." The Kansas City Southern Railway Company brought an action of mandamus in the Supreme Court to require the Commission to find and report such excess cost, and in 1920 the court held[27] that the Commission was under the duty of finding the excess irrespective of its evidential usefulness as an element in railway value.

The Commission proceeded to comply with the order of the Court, as far as possible, but recommended to Congress the enactment of an amendment to the Interstate Commerce Act to relieve them of a requirement which they regarded impossible of fulfillment. On June 7, 1922, in response to this recommendation, Congress relieved the Commission of the necessity of reporting "the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." At present the Commission reports only original value of lands as far as can be determined exactly and the present value, which has been defined as almost synonymous with market value.

Finding original cost to date, or cost of reproduction new, or cost of reproduction less depreciation, however, does not necessarily constitute the finding of a "value" for the railroad as a whole. Such findings usually produce different results, and unless one or another is accepted a final single sum value must be determined by bringing together many diverse factors. When the final report on the Texas Midland property was made in 1918 it contained no statement of a final single sum. Certain carriers insisted that the Act required the finding of a single sum as the value of the property. Other parties to the same proceedings were

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[26] *Texas Midland R. R., supra,* p. 169.

[27] *United States ex rel. Kansas City Southern Railway Co.* v. *I. C. C.,* 252 U. S. 178.

equally insistent that the Act did not permit finding such a single sum, and that the Commission was required to report only the sums arrived at by obeying the specific provisions in the paragraph entitled *First*, in section 19a, as to original cost, etc. The Commission held that although no single sum value was given in this particular instance, it was of the opinion that it was authorized by the Act to find a single sum value, and that it was the ultimate purpose of the Commission to make such a finding for each property.[28] The policy announced in Texas Midland has been followed throughout by the Commission. A single sum has been stated in each report, such sum being the "value" of the property for the purposes of the Commission.

The Commission has further declared that the value which it finds is a value for rate-making purposes, as distinguished from values for other uses. It has been consistently maintained by the Commission that railroad properties may have more than one value, depending upon the use to be made of the value determined. In the San Pedro, Los Angeles and Salt Lake case the Commission called attention to the fact that

> public utilities commissions generally and the Supreme Court and other courts of the United States in a number of cases have been particular in instances when they were considering values to specify the purposes for which the values under consideration were to be used.[29]

And in the Kansas City Southern case it was said:

> The determination of the methods of valuation for regulatory purposes depends upon the use which is to be made of the resultant figure. Whatever the limitations may have been upon the original meaning of the term value, it is certain that at the time the valuation act was passed the term was generally used with recognized but widely

[28] *Texas Midland R. R., supra*, p. 6.
[29] *San Pedro, Los Angeles & Salt Lake R. R. Co.*, 75 I. C. C. 463, 506.

> varying meanings. Valuation for capitalization, consolidation, taxation, and rate-making purposes and estimates of exchange value can not all be made upon the same basis.[30]

Carriers have repeatedly contended that the property they devote to the public service can have but one value. They assert that whatever the purpose for which the value is determined, whether as a rate base, or for any other purpose, there is but one value of the property, and it must always be determined in the same way.[31] The United States District Court for Southern California in a case involving the valuation of the Los Angeles and Salt Lake Railroad upheld the contention of the carriers that there is only one value which may be attached to railroad property. In this case the Commission had refused to include in its final value the full recorded sums for working capital, materials and supplies on the grounds that those accounts included much material for purposes of extensions, additions, or betterments, the cost of carrying which was properly a charge to capital account and not to operating expense. In addition some of the materials and supplies consisted of scrap material which should be classed, along with the material held for betterments, as non-carrier property for purposes of valuation. The Commission had not included the above items because it held the opinion that in determining a value for rate-making purposes it was necessary to determine the specific property that is being used in rendering the common-carrier service for which rates are to be charged.[32] The Court held:

> The reports of the Commission we think clearly show that its action was based upon the view that the property of the railroad company in question has more than one kind of value. And in our opinion the view constituted its fundamental error,

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[30] *Kansas City Southern Ry. Co.*, 84 I. C. C. 113, 116.

[31] *San Pedro, Los Angeles & Salt Lake R. R. Co., supra*, p. 506.

[32] *Los Angeles & S. L. R. R. Co.* v. *U. S.*, 8 Fed. (2nd) 747, 753. See also, *Kansas City Southern Ry. Co., supra*, p. 116.

> and consists in its failure to do what the statute in express and, as we think, clear and unmistakable terms, authorized it to do as the basis upon which to fix the rates to be charged by the railroad company: that is to say, the true actual value of all of the property of the company at the time used in its transportation business. . . . .
>
> In no place in any of the statutes bearing upon the question do we find even an implication of any authority on the part of the Commission to find that any of the property of any common carrier used in its transportation business has two kinds of value.[33]

The above decision was rendered on December 7, 1925.[34] Since that time, however, the Commission has again called attention to its finding of value under section 19a as a value for rate-making purposes. In the Riverside, Rialto and Pacific case, decided December 10, 1926, the Commission said:

> The values found by us under section 19a of the Interstate Commerce Act are not values for purchase and sale but values for rate-making purposes. . . . . These are physical properties, and the costs or values referred to must necessarily be considered a valuation for rate-making purposes, whereas for purposes of purchase and sale they may be relatively unimportant.[35]

The final single sum value which the Commission determines is also the value of the property of the carrier devoted to the public service at the time that it is so devoted. This interpretation has been laid down by the Supreme Court in a number of valuation decisions. In *Smyth* v. *Ames* the Court said:

> We hold . . . . that the basis of all calculations as to the reasonableness of rates to be charged

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[33] *Los Angeles & S. L. R. R. Co.* v. *U. S.*, *supra*, p. 756.

[34] The decision of the District Court was reversed by the Supreme Court in *U. S.* v. *Los Angeles & S. L. R. R. Co.*, 273 U. S. 299, but the Court did not discuss the problem involved here.

[35] *Riverside, Rialto & Pacific R. R. Co.*, 119 I. C. C. 728, 735.

> by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. . . . . What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.[36]

And later, in *San Diego Land and Town Co.* v. *National City Co.:*

> . . . . what the cmpany is entitled to demand in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.[37]

In determining the single sum value of a railroad the Commission does not follow any single criterion of such value. Original cost has not been used, even when it had been ascertained with a fair degree of certainty, because of the infirmities in the investment accounts, to which reference has been made, and because of the fact that many of these accounts had been vitiated by improvidence, waste and dishonesty. Commissioner Eastman, in a dissenting opinion in the San Pedro, Los Angeles and Salt Lake case, reviewed a number of decisions in which the Supreme Court had held that the property may have cost more than it ought to have cost,[38] or that the original cost had been inflated by improper charges and injudicious expenditures,[39] or that the acquisition of more property than necessary had saddled upon the carrier a burden of improvident investment.[40] The infirmity in the use of the cost figure as the value of a railroad was clearly pointed out by the Supreme Court in the Minnesota Rate Cases. There the Court said:

> It is clear that in ascertaining the present value we are not limited to a consideration of the amount

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[36] *Smyth* v. *Ames*, 169 U. S. 466, 546.
[37] *San Diego Land & Town Co.* v. *National City Co.*, 174 U. S. 739, 757.
[38] *Ibid.*, 174 U. S. 758.
[39] *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 442.
[40] *Stanislaus County* v. *San Joaquin C. & I. Co.*, 192 U. S. 201, 214.

> of the actual investment. If that has been reckless or improvident, losses may be sustained which the community does not underwrite.[41]

The use of cost of reproduction alone also raises difficulties, according to the Commission's views. That it is an element which ought to be considered the Commission has no doubt; it accepts the rule laid down in the Knoxville case and the Minnesota Rate Cases that cost of reproduction is a method of ascertaining present value, but refuses to accept that method to the exclusion of all others. Reproduction at present prices, due to the great increase in the general price level resulting from the World War, would produce a higher value than would be obtained by the other methods which have been useful in the valuation process. It must be said for the carriers as a whole that they have not contended for values swollen in harmony with the rise in the general price level. In 1920, when the Commission authorized general increases in rates based on an aggregate value less than the aggregate recorded investment in road, equipment, and working capital, the carriers asked that their investment accounts be used as the base.[42] In 1922, the Commission in reducing rates, used an aggregate value similar to that used in 1920 and the reduction was not contested by the carriers.[43] Similarly in 1926, in asking for an increase in rates in the western district the carriers, while arguing that the current price level warranted a far higher value, asked only that their aggregate recorded investment accounts be used as a base.[44] However, they have contended that in fixing a final single sum value the Commission should lay more stress than it does upon reproduction cost.

It is interesting to note that the carriers have not always contended for reproduction cost as a method of determining

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[41] *Minnesota Rate Cases, supra,* p. 454.
[42] *Increased Rates,* 1920, *Ex Parte* 74, 58 I. C. C. 220.
[43] *Reduced Rates,* 1922, 68 I. C. C. 676.
[44] *Revenues in Western District,* 113 I. C. C. 3.

value, and that the importance of the question has been magnified by the recent rise in prices. When *Smyth* v. *Ames* was being argued in the Supreme Court, William Jennings Bryan, counsel for the appellants, supported the reproduction cost theory as firmly as the carriers support it now. In that case it appeared that the cost of reproduction of the railroad properties in question, because of a decline in the general price level, was not only less than the "actual" original cost, but also than the "reasonable" original cost. The carriers were contending for original cost. Commissioner Eastman, in calling attention to the above situation, maintained that if reproduction cost is sound in principle it would be sound in a period of falling prices as well as in a period of rising prices.[45]

Commissioner Meyer, writing the decision of the Commission in the O'Fallon case, pointed out that the cost-of-reproduction doctrine is subject to practical as well as to theoretical difficulties. The essential objection to its use as the basic measure of fair value, he said, may best be presented by a brief survey of the railroad situation and consideration of the results which would follow its application. The great purpose of the Transportation Act of 1920 is to establish and maintain an adequate transportation system. Under private ownership this cannot be done unless the necessary capital can be attracted to the railroad industry, attracted primarily on the basis of stability of income and return. Stability of return can not be guaranteed unless there is, first of all, stability in the rate base. But with conditions as they have been since 1920 the rate base, if determined on the basis of cost of reproducing the properties at present prices, would have been subject to violent fluctuations. Taking 18 billions as a base, because it corresponds closely to the $18,900,000,000 aggregate value used in *Ex Parte 74* at the time of the general rate increases in 1920,

[45] Cf. Commissioner Eastman, dissenting opinion in *San Pedro, Los Angeles & Salt Lake R. R. Co., supra*, pp. 533-34.

and applying the bureau of valuation's ratios he showed that "the value of precisely the same structures would have become 41.4 billions in 1920, 35.1 billions in 1921, 28.3 billions in 1922, and 31.3 billions in 1923. In other words, assuming a static property there would have been a gain of 23.4 billions in 1920, a loss of 6.3 billions in 1921, a further loss of 6.8 billions in 1922, and a gain of 3 billions in 1923. These huge 'profits' and 'losses' would have occurred without change in the railroad property used in the public service other than the theoretical and speculative change derived from a shifting of general price levels." Furthermore, he pointed out that determination of changes in the prices for railroad materials during the period 1920-1923 was not only difficult, it could not be done with any marked accuracy because of the fact that very little new railroad construction had been undertaken in those years.[46]

Because of the manifest difficulties in using cost of reproduction as the basic value of railroad properties the Commission has chosen to consider it as only one element in the determination of such value. The Commission has steadfastly refused to adopt any single formula for deriving final single-sum values and has refused to give an analysis of its methods. In reply to the petition of the National Conference on Valuation, in 1923, that the Commission furnish along with the final single-sum value an analysis of the methods by which it had been obtained, the Commission reviewed the terms of the Act of 1913 with regard to analyses of methods. In the first place, the Act requires analyses of the methods by which original cost to date, cost of reproduction new, and cost of reproduction less depreciation are obtained. These have always been reported. In the second place, the Commission is required to report analyses of the methods by which "other values and elements of value" are obtained. This requirement, in the opinion of the Commis-

[46] *Excess Income of St. Louis & O'Fallon Ry. C.*, 124 I. C. C. 1, 29-36.

sion, has reference to the so-called "intangible" values, such as going value, franchise value, appreciation, etc. In the cases thus far decided, although the Commission has often recognized the existence of such elements of value, it has not found intangible values to which a money value could be ascribed, and has chosen to make allowance for such elements, where necessary, in the final single-sum value. The third mention of analysis of methods is found in connection with evaluating property held by carriers for other than common carrier purposes. Thus, there is nothing in the Valuation Act which requires an analysis of the methods used in fixing a final value.[47] The Commission has consistently maintained that the finding of final value is essentially a matter of judgment. Where such a duty reposes in a number of individuals they may reach conclusions in which they all are agreed, although each may have given different weights to different factors, and they may have arrived at their conclusions through materially different processes. Support for such interpretation, the Commission says, is found in the language of the Court in the Minnesota Rate Cases, at page 434:

> The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.

The number and the complexity of the problems which we have briefly reviewed explain fully why the valuation work of the Commission is only partially completed after fifteen years of activity. Unfortunately for the enforcement of the recapture clauses it will take probably many years to finish the task. The valuations which have been made final—and this is true for only a small percentage of the railroad mileage, as we have said—represent only basic valuations as of certain valuation dates. It is probable also that some of these valuations will be overturned by the courts, since

[47] *Petition of National Conference on Valuation, supra,* p. 12.

the correctness of the findings and the inclusion or exclusion of specific findings can be contested by the carriers.[48] But in order that these valuations may be used for recapture purposes, they must be brought down to date, and for every year, since section 15a requires that a part of the excess earnings shall be paid over to the Government for every year in which such excess occurs.

Valuation order No. 3 requires the carriers to report to the Commission all additions, betterments, and retirements made subsequent to the date of inventory of the original valuation. Making such changes is in itself a considerable task, involving the examination and checking of carrier records, often for a number of years, since some carriers have an original valuation date of 1914. It is only with the approach of the completion of the basic valuations that the Commission has been enabled to employ its forces, to any great extent, in the operation of bringing basic valuations down to date. The various railway properties of the country in the original valuations have valuation dates as follows:

Valuation Date June 30—	Number of Properties	Valuation Date June 30—	Number of Properties[49]
1914	71	1920	6
1915	185	1921	3
1916	475	1922	1
1917	478		
1918	548	TOTAL	1,977
1919	210		

The real difficulty which the Commission faces in bringing valuations down to date, however, is found in paragraph f of section 19a, which reads in part:

> Upon the completion of the valuation herein provided for the Commission shall thereafter *in like manner* keep itself informed of all extensions and improvements or other changes in the condition and

[48] See: *U. S. and I. C. C.* v. *Los Angeles & Salt Lake R. R. Co.*, 273 U. S. 299, 312.

[49] *Thirty-seventh Annual Report* of the I. C. C., 1923, p. 17.

> value of the property of all common carriers, and shall ascertain the value thereof, and shall, from time to time, revise and correct its valuations.

In its annual report for 1923 the Commission said that its experience prompted "serious doubts as to the practicability of proceeding in 'like manner' in bringing valuations down to date." The employment of the methods used in obtaining the basic valuations would not only be cumbersome, the valuations obtained would always be in arrears of the time of use, and estimates would have to bridge a considerable interim. Furthermore, the physical magnitude of "correcting the original inventory by eliminating units retired and adding units installed subsequent to date of valuation, and reclassifying the property in accordance with conditions or use as of the new date, for the purpose of making estimates of reproduction new and reproduction less depreciation of ways and structures," and the reappraisal of lands for the purpose of finding present value, would involve expenditures the propriety of which might be questioned.

Moreover, bringing valuations down to later dates, in "like manner," as Commissioner Meyer has pointed out,[50] raises difficulties with cost of reproduction estimates. Such estimates in the basic valuations are made on the basis of unit prices found to obtain June 30, 1914, and during the five years, and in some instances, the 10 years, prior thereto. This is done because from the beginning the Commission has recognized the advisability of making such estimates comparable as between various railroads, regardless of the date of the basic valuations, and also because it aids in establishing a base for future use in fixing values as of later dates.[51] June 30, 1914, was chosen because the Commission felt that "the cost of producing and equipping a railroad in most parts of this country on that date, was a fair average

[50] B. H. Meyer, Chairman, concurring, *San Pedro, Los Angeles & Salt Lake R. R. Co., supra,* p. 591.
[51] *San Pedro, Los Angeles & Salt Lake R. R. Co., supra,* p. 474.

for at least the 20 years preceding."[52] Adjusting values to later dates involves consideration of the changes in the general price level during the war. Although there is little doubt that consideration should be given to higher prices in connection with net additions to properties since valuation date it remains at least a matter for debate as to whether or not such prices should be applied in the determination of the value of the entire property of a railroad as of a date subsequent to the date of the basic valuation.[53]

The manifold difficulties which the Commission would experience in using the same methods in bringing valuations down to dates subsequent to the date of the basic valuation, and the doubts raised with regard to its powers to do otherwise, have caused the Commission to recommend to Congress that the act be amended so as to define clearly the duties of the Commission under paragraph f of section 19a. The Commission has suggested amendments embodying different theories as to the proper method to be adopted, one of which proposes that it be empowered to bring the valuation to date "by adding to or subtracting from its original basic valuation of the property the net property changes, measured in dollars and cents, that are properly chargeable to or deductible from property account."[54] Such an amendment would afford practical administrative results, but it would raise the question of the right of Congress to prescribe an investment or original cost basis for valuation, at least of the property acquired since the basic valuation date. The Commission has recognized this possibility and has suggested other short-cut methods of bringing valuations to date. So far, however, Congress has refused to act upon the recommendations of the Commission, and there still remains the necessity for interpretation of its duties in this

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[52] *Texas Midland R. R., supra,* p. 140.

[53] Cf. Commissioner Meyer, concurring in *San Pedro, Los Angeles & Salt Lake R. R. Co., supra,* p. 591.

[54] *Thirty-seventh Annual Report* of the I. C. C., 1923, p. 18.

particular. The whole situation tends to obstruct the work of valuation, especially with respect to the use of results under section 19a for recapture purposes.

The non-availability of valuations under section 19a has driven the Commission to the adoption of a short-cut method of valuation for recapture in the case of excess income of the St. Louis and O'Fallon Railway. The carriers in this case contended that valuation for recapture must be obtained under section 19a, and that it is "premature" on the part of the Commission to set up a value and proceed to recapture excess earnings on the basis of it when the work under the Valuation Act is not completed. The Commission held, however, that the provisions with regard to the determination of the value of railroad properties and with regard to recapture must be considered in connection with the whole of section 15a and in the light of the purposes of the Act of which they are a part. It was not contemplated in the Act that the benefits which it was hoped would accrue to the carriers and to the public should be deferred to an indefinite future, until the work under section 19a had been completed. According to the Commission, in the majority decision, the language of section 15a indicates that the program be put into operation as soon as possible. Section 15a requires that the Commission "give consideration to all the elements of value recognized by the law of the land for rate-making purposes," but it requires also that the aggregate value of railroad properties be determined "from time to time and as often as may be necessary." There is an entire lack of direction to the Commission regarding methods of procedure in making such valuation, and consequently the Commission has construed the whole section as permitting them to make valuations under section 15a "in a more summary manner than valuations under section 19a."[55]

That the Commission had decided to make the O'Fallon

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[55] *Excess Income of St. Louis & O'Fallon Ry. Co., supra,* pp. 7-8.

case a test case in valuation procedure is evident in the language of the decision. In answer to the request of valuation counsel for western carriers that the case be disposed of by itself and on its own merits the Commission said:

> We are dealing here with one small railroad. Nevertheless, what we do in this case we must in principle do for all the railroads in the United States. Whatever our decision, its effect in dollars and cents is relatively unimportant in this particular case. But, having in mind, as we must, the whole railroad situation, the decision is of the greatest consequence from both private and public viewpoints.[56]

The method of arriving at a final single-sum value in the case of the property of the O'Fallon was briefly this: In order to determine the value of the property devoted to common carrier service during the recapture periods covered in the case, the Commission started with the valuation or inventory date of June 30, 1919. The units in existence on that date being known, to them were applied the unit prices of 1914 for an estimated cost of reproduction in their condition on that date. It being found, further, that the actual cost of installing units between 1914 and 1919 exceeded the cost of reproducing such units at 1914 unit prices, a sum representing price increases on the units installed during that period was added. For the period from June 30, 1919, down to the end of each recapture period estimate was abandoned, and there was added the net cost of additions to property less retirements. Land was taken at its current value as measured by that of neighboring lands.[57]

The principal objection raised to this method of valuation was that which we have discussed before, the failure to make reproduction estimates on the basis of present prices. Witnesses for the Bureau of Valuation introduced composite

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[56] *Ibid.*, p. 26.

[57] Cf. Commissioner Hall, dissenting opinion, *Excess Income of St. Louis & O'Fallon Ry. Co., supra*, p. 60.

index numbers to show that with unit prices of 1914 being considered as 100, the index for Dec. 31, 1920, would have been 230; for Dec. 31, 1921, 195; for Dec. 31, 1922, 157; and for Dec. 31, 1923, 174.[58] In response to the contentions that the refusal to make reproduction estimates at present prices does not give proper weight to increased cost of construction in times of advancing price levels the Commission held that it had given weight to such changes. Changes in the price level were considered when the differential was added on net additions to investment from 1914 to 1919 for the difference between cost of reproduction estimates and actual cost, when net additions to investment from 1919 to the various recapture dates were taken at cost figures, and when land was valued at the market values prevailing at the time of recapture. Such practices, the Commission said, constitute the only method of giving weight to price changes that is not "dependent on caprice," and which does not involve the complete acceptance of the current reproduction cost doctrine.[59] The use of estimated reproduction cost for the property as of June 30, 1914, was justified by the Commission on the principle laid down in the Texas Midland case and followed throughout in making reproduction estimates, that such cost represented a fair average for at least 20 years preceding. Moreover, it had been impossible to determine the original cost of the O'Fallon because the carrier's accounting records for the period from the date of its incorporation, June 1, 1896, to June 1, 1908, were missing.[60]

The advantages which the Commission claims for this method of valuation are many. It is simple and easy of application and involves no great expense or delay, since the underlying inventory work under section 19a has been completed. It assures fair treatment to the investor because

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[58] *Ibid.*, majority opinion, p. 22.
[59] *Excess Income of St. Louis & O'Fallon Ry. Co., supra*, p. 39.
[60] *Ibid.*, p. 20.

a fair return will be obtained on the money that has gone into the railroads, provided the traffic is available. Thus will be given the assurance necessary to induce investors to place their funds in railroad enterprises. Finally, by the adoption of such a method there will be achieved the stability of rate base which the Commission finds essential to a wise and just plan of public regulation.[61]

The O'Fallon company applied to the Federal courts for an injunction to restrain the enforcement of an order of the Interstate Commerce Commission directing the company to pay over to the government excess earnings calculated on the basis of the value so determined. A decision was rendered in the United District Court for the Eastern District of Missouri, December 10, 1927, by a special court of three Federal judges. One of the grounds on which the order was attacked was that it was "based upon an erroneous and inadequate finding of value," that the Commission had measured such value upon the "assumed prudent investment basis" and had failed to give "effective and dominant consideration to the cost of reproduction at the price levels existing at the time the issue arises."[62] The attorneys for the United States contended that no question of confiscation was presented in this case and that therefore it was not necessary for the court to examine the accuracy of the values found by the Commission or the methods used in determining such values. The court found that, after deducting the excess which was to be paid over to the Government by order of the Commission, the net return was ample enough to avoid the issue of confiscation, even when the values claimed by the O'Fallon Company were used. The application was accordingly denied, and no review was made of the Commission's findings.

On May 20, 1929, the Supreme Court handed down a decision reversing the decision of the lower court and an-

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[61] *Ibid.*, p. 38.
[62] *St. Louis & O'Fallon Ry. Co.* v. *U. S.*, 22 Fed. (2nd) 980.

nulling the recapture order of the Commission to the O'Fallon railroad. The Supreme Court held that the fundamental question presented was whether the Commission acted as directed by Congress in applying the law of the land, and not the question as to whether or not the income retained by the O'Fallon was sufficient to avoid actual confiscation.

The methods employed by the Commission in determining the value of the O'Fallon were attacked on the grounds that reproduction estimates for the bulk of the property were based upon 1914 prices, and that no consideration was given to prices which prevailed on the recapture dates. The doctrine adhered to by the Court was stated in *Southwestern Bell Telephone* v. *Public Service Commission,* and is as follows:

> It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded such forecast becomes impossible. Estimates for tomorrow cannot ignore prices today.[63]

The Court declared that in its decision the Commission had carefully refrained from stating that "any consideration whatever was given to present or reproduction costs in estimating the value of the carrier's property." Furthermore, the Court said, four dissenting commissioners declared that reproduction costs were not considered, and "the report itself confirms their view." The Court then quoted from Commissioner Hall's analysis[64] of the methods employed in evaluating the O'Fallon property (in which the Commissioner contended that for the major part of the carrier's

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[63] *Southwestern Bell Telephone Co.* v. *P. S. Comm.*, 262 U. S. 276, 287.
[64] See page 74.

property no consideration was given to costs and prices obtaining on recapture dates), saying that it accurately described the action of the Commission. In thus failing to consider present prices, the Court held, the Commission has disregarded the "approved rule" which the Court "in the exercise of its proper function has declared the law of the land concerning valuations for rate-making purposes," and "has thereby failed to discharge the definite duty imposed by Congress."

The significance of the O'Fallon decision from the standpoint of this chapter is that the Commission will not be able to use the short-cut method of valuation adopted to facilitate the enforcement of the provisions of section 15a. The Court held that present reproduction costs must be considered, but in holding that "the weight to be accorded thereto" was not before the Court, it left to the Commission the duty of determining such weight. As Associate Justice Stone has said in his dissenting opinion, the Court has not held that the evidence of such costs may not be outweighed by other considerations affecting value. The Commission, therefore, will have to go on with its valuation work under section 19a, and any railroad not satisfied with the value placed upon its property will have, as before, the right of appeal to the courts.

Meanwhile, the present unsatisfactory enforcement of the recapture provisions will be perpetuated to an indefinite future, for the determination of the fair value of a railroad property is an antecedent condition to the determination of excess income subject to recapture. The valuation work of the Commission, as we have seen, is still far from completion, even the basic valuations, and there remains the problem of bringing such valuations down to recapture dates in some manner satisfactory to the individual railroads and to the courts. Until this work has been completed we cannot look for effective enforcement of the recapture clauses so as to accomplish the purposes contemplated in the Act of 1920.

CHAPTER IV

THE RECAPTURE CLAUSES IN OPERATION

Up to the time of the issuance of its report for the year 1928, the Interstate Commerce Commission had served eight general orders upon all carriers subject to section 15a of the act to regulate interstate commerce, calling upon them to report excess earnings that had accrued to them. In response to these orders the carriers had filed reports showing the following results with respect to excess net railway operating income:

Period	Number of Reports	Number of Reports in Which Excess Income is Reported	Total Amount of Excess Income Reported[1]
Applicable period, 1920.....	991	34	$2,505,006.17
Calendar year, 1921.....	973	27	458,535.72
Calendar year, 1922.....	929	50	1,865,153.46
Calendar year, 1923.....	897	52	6,878,593.92
Calendar year, 1924.....	894	23	1,191,603.75
Calendar year, 1925.....	886	24	2,275,050.68
Calendar year, 1926.....	874	15	1,033,497.02
Calendar year, 1927.....	821	8	170,807.25
Total Excess			$16,378,247.97

The above computations of excess income have not been made upon values fixed by the Commission. Under the Commission's orders the carriers have been permitted to compute their claimed values upon such basis as they have deemed proper, consequently many different bases have been used. When the Commission shall have determined values for recapture purposes the number of carriers found to have earned excess income and the amounts thereof may differ substantially from the foregoing statements.

[1] Taken from *Forty-second Annual Report* of the I. C. C., 1928, p. 5.

It should be further understood that not all excess above 6 per cent upon the value of railroad property need be reported. Paragraph 18 of section 15a provides:

> Any carrier, or any corporation organized to construct and operate a railroad, proposing to undertake the construction and operation of a new line of railroad may apply to the Commission for permission to retain for a period not to exceed ten years all or any part of its earnings derived from such new construction in excess of the amount heretofore in this section provided, for such disposition as it may lawfully make of the same, and the Commission may, in its discretion, grant such permission, conditioned, however, upon the completion of the work of construction within a period to be designated by the Commission in its order granting such permission.

The Commission has received numerous applications for permission to retain excess earnings on new construction, most of which have been granted, although many have been denied. The Commission has held that paragraph 18 does not apply to construction begun before the date of the effective operation of section 15a,[2] that it has no application to operations of leased lines,[3] and that the right to retain such excess is lost by a carrier when control of it is obtained by another carrier.[4] Applications have been denied in cases in which the additional system income promises to be ample to sustain the new line,[5] and in cases in which no additional equipment is required and no additional changes to road and equipment accounts are contemplated.[6] Paragraph 18, the Commission says, was designed primarily to encourage enterprises in a territory which is deficient in transportation facilities, consequently its application should not be extended

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[2] *Lease of Virginian & Western Ry.*, 72 I. C. C. 454.
[3] *Operation of Line by G. M. & N. R. R.*, 111 I. C. C. 583.
[4] *Control of J. & E. Ry.*, 111 I. C. C. 587.
[5] *Construction by St. Louis, Brownsville & Mexico Ry.*, 117 I. C. C. 307.
[6] *Construction by Fordyce & Princeton R. R.*, 117 I. C. C. 720.

to construction which is principally in the interest of the carrier, and only indirectly for the benefit of the general public.[7] Applications have also been denied on the grounds that it is often difficult to segregate earnings and expenses which may rightfully be charged to a part of a system[8] and that such practices might operate to defeat the recapture of excess earnings.[9]

Not all the excess, which according to the reports of the carriers is subject to recapture, has been paid over to the Commission, and the bulk of the payments have been made under formal protests and reservations.[10] Consequently, the general railroad contingent fund, which was to be made up of such earnings and to be used primarily for the benefit of weak carriers, has not been available for the uses contemplated in the Act of 1920. Contingent fund moneys are held in the Treasury of the United States as a trust fund for investment in obligations of the United States as required by paragraph 10 of section 15a. The status of the fund as of December 1, 1928, was as follows:[11]

Payments by carriers of excess income	$8,007,208.39
Payments by carriers of interest on overdue payments	20,559.09
Interest from bank balances and Interest from investments in U. S. obligations	1,157,210.62
Total credits to the general railroad contingent fund	$9,184,978.10

The conclusion which inevitably follows even a cursory examination of the Commission's reports is that the recapture clauses have not operated to help the weak roads. The sums that have been recaptured are relatively small,

[7] *Kansas, Oklahoma & Gulf Extension*, 72 I. C. C. 392.
[8] *Deficit Status of U. S. & Canada R. R.*, 76 I. C. C. 455.
[9] *Virginian & Western Extension*, 72 I. C. C. 55.
[10] In Appendix A a complete list of all carriers who have paid excess earnings to the Commission and the amounts thereof can be found.
[11] *Forty-second Annual Report* of the I. C. C., 1928, p. 6.

and the money has not been available because of the protests of the carriers. Early in the administration of the recapture clauses the carriers had protested recapture of excess earnings on the ground that such procedure was unconstitutional, but with the decision of the Supreme Court in the Dayton-Goose Creek case the question of constitutionality was removed, the court holding that the carrier never obtains title to the excess above a fair return received by it. Since then the carriers have contended that the Commission is without authority to take excess earnings from them while the determination of final values for their several properties remains in abeyance.

Although the lack of recapture valuations has been the principal obstacle to the creation of a serviceable general railroad contingent fund, the requirements of the present law raise serious doubts that such a fund, free of all protests and reservations, could be used directly to help weak carriers. In specifying the uses to which the contingent fund moneys might be put, Congress hedged about or safeguarded the fund in such a way that weak carriers would find it difficult, if the money were available, to qualify for the use of it. The Act provides that the contingent fund shall be used for making loans directly to carriers, and for the purchase of equipment or facilities to be leased to carriers. Any carrier may at any time make application for a loan from the general railroad contingent fund, but the granting of such a loan is not left to the discretion of the Commission; it is subject to many restrictions. Paragraph 12 of section 15a provides:

> If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan from the general railroad contingent fund is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered

> are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan, the Commission may make a loan to the applicant from such railroad contingent fund, in such amount, for such length of time, and under such terms and conditions as it may deem proper. The Commission shall also prescribe the security to be furnished, which shall be adequate to secure the loan. All such loans shall bear interest at the rate of 6 per centum per annum, payable semi-annually to the Commission. Such loans when repaid, and all interest paid thereon, shall be placed in the general railroad contingent fund.

It is contended that the restrictions placed upon loans to carriers from the general railroad contingent fund militate against the successful operation of the recapture clauses in the interest of weak carriers. The evident purpose of Congress in making provision for such a fund was that it might be used to furnish capital to railroads which because of weak credit might find it difficult to secure capital in the open market. Yet the requirements that loans be made at 6 per cent, and that they be restricted to cases in which the prospective earning power of the carrier and the security offered by it furnish reasonable assurance of its ability to repay the loan, operate to deny to weak carriers the use of contingent fund moneys. Weak roads are those which cannot provide "adequate" security and "reasonable assurance" that the loan will be repaid. Unless the Commission is much more lenient than bankers with regard to the security offered, weak roads will not be able to qualify. It is further contended by representatives of the short lines that if a weak road were in such condition that it could satisfy the requirements of the law with regard to borrowing from the

general railroad contingent fund it could readily borrow at 6 per cent, or even less, in the open market.[12]

The above contention is not without point. Certainly loans to carriers from the contingent fund will have to be made on terms that are more lenient than bankers lay down if the weak roads are to be helped through loans. The recapture of excess earnings is a necessary part of a system of regulation designed to produce revenues adequate to sustain railroads as a whole where the different roads demonstrate wide disparity of earning power under uniform rates, and it is inevitable that such excess be used primarily for the benefit of carriers which under such regulation earn less than the average road. The Act contemplates also that contingent fund moneys be used for the purchase of equipment and facilities to be leased to carriers, but requires that the lease in every case shall be sufficient to pay a return of 6 per cent per annum, plus an allowance for depreciation, upon the value of such equipment or facilities. This requirement again limits the serviceableness of the contingent fund for weak carriers. The Act needs amending to make the general railroad contingent fund serve the purposes for which it was designed.

Opponents of section 15a contend that the recapture provisions are not only of no service to weak carriers, but that they are unenforceable. They contend that strong carriers indulge in wasteful or extravagant expenditures to avoid recapture. Since 1920 a number of bills have been introduced into Congress for the repeal or amendment of section 15a. In 1924, the Senate Committee on Interstate Commerce held extended hearings on four bills[13] to amend or repeal the section. Representative Newton introduced a bill[14] into

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[12] Cf. Ben. B. Cain, General Counsel of the American Short Line Railroad Association, testimony before the House Committee on Interstate and Foreign Commerce, *Hearings on H. R. 5641*, 70th Congress, 1st session, p. 417.

[13] S. 91, S. 1227, S. 1919, and S. 2951, 68th Congress, 1st session.

[14] H. R. 10376, 70th Congress, 1st session.

the House on February 1, 1928, having as its purpose the repeal of the recapture clauses. The last-named measure was supported by the National Industrial Traffic League, chiefly on the ground that the recapture of railroad earnings by the Government discourages economical and efficient operation of the carriers. Shippers generally, through their organizations, have expressed disapproval of recapture as tending to promote extravagance.

The importance of a rigid supervision of railroad accounts, both from the standpoint of fair return and of recapture, was fully appreciated by Congress when section 15a was incorporated into the act to regulate interstate commerce. It was provided that the railroads should be entitled to earn such fair return only "under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment." There was thus placed upon the Commission the duty of studying and observing carrier practices in a most intimate manner.

For its supervision of the expenditures of carriers the Commission has chiefly relied upon the examination of carrier accounts. Under the system of uniform accounts which the Commission has prescribed all receipts and expenditures are required to be assigned to accounts in accordance with prescribed rules. In addition, a large force of examiners is constantly in the field engaged in examining the books of carriers to see that accounting regulations are observed, and it is the opinion of the Commission that its regulations are generally followed. However, the accounting system does not attempt to dictate how much a carrier shall spend for a particular object, requiring only that the expenditure be correctly recorded. Consequently, the checking up of carrier expenditures, especially when the matter of the avoidance of recapture is under consideration, is not a problem of accounting practice but of judgment as to reasonable expenditure.

It has been contended repeatedly in hearings before the Senate and House Committees and in the halls of Congress that many railroads are being over-maintained, and that the purpose is to avoid recapture. Senator Mayfield, speaking in the Senate, June 15, 1926, charged over-maintenance of the western carriers in 1923. The railroads of the western district, he said, during 1911, 1912, and 1913, spent on an average, for maintenance of way and structures, $150,870,457 per annum, whereas for the year 1923, under the operation of the recapture provisions, the class I carriers alone of the western district spent $322,297,240 for maintenance of way and structures, an increase of 113 per cent. Expenditures for maintenance of equipment by the class I carriers of the western district in 1923 were 205 per cent greater than the average annual expeditures of all carriers in the western district for the years 1911 to 1913. He charged that the increase in maintenance expenditures was not altogether due to an altered price level, but in considerable measure to the desire of strong roads to avoid recapture.[15] Commissioner Hall, however, testifying before the Senate Committee on Interstate Commerce, in 1924, said that the statistical returns showed unmistakably that maintenance expenditures in 1923 were abnormally increased by the necessity of making up deferred maintenance of the previous year.[16]

The matter of reasonable expenditures for maintenance has been the subject of a number of investigations by the Commission. In 1922, the Commission found that the Pennsylvania Railroad, in letting out contracts for repair of locomotives, while maintaining shops on its own lines for such work, had paid over $3,000,000 in excess of what the same work might have cost in the company's own shops, and that the work could have been done in the Pennsylvania

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[15] *Congressional Record* v. 67, p. 11278.

[16] *Hearings on the Repeal of Section 15a*, U. S. Senate, 68th Congress, 1st session, p. 671.

shops within a reasonable time.[17] In an investigation of the New York Central's expenditures at the same time it was found that similar excessive expenditures had been made for repairs farmed out.[18] A similar investigation of the New York, New Haven and Hartford system, in 1926, disclosed the fact that the cost of repairs at outside shops during 1922, 1923, and 1924, "greatly exceeded the cost of substantially similar work in the respondent's shops," and that "the greater portion of such excess cost was an unreasonable expenditure for maintenance of equipment and not in the interest of efficient and economical management and reasonable expenditures for maintenance of way, structures, and equipment as required by section 15a of the act."[19] In none of these cases did the Commission impute "ulterior or dishonest motives" to the management.

There is, however, an inherent difficulty in checking railroad expenditures by an investigation, in that the investigation is conducted after the expenditures have been made, and the viewpoint of the investigators may differ substantially from that of the railroad management. This difficulty was admirably stated by Commissioner Woodlock in a concurring decision in the New Haven case. The Commissioner said:

> Viewing the matter of the New Haven repairs to equipment in the cold, clear light of "hindsight" (being now by several years removed from the somewhat turbulent conditions of 1922), we are no doubt safe in stating that much of the repair work performed at excessive cost in outside shops subsequent to November 1, 1922, was unnecessary and without adequate justification. . . . .
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> In judging a group of human actions in the light of "hindsight" we can, perhaps, with much accu-

[17] *Construction and Repair of Ry. Equipment:* Penna. R. R., 66 I. C. C. 694.

[18] *Construction and Repair of Ry. Equipment:* N. Y. C. R. R. Co., 66 I. C. C. 732.

[19] *Construction and Repair of Ry. Equipment:* N. Y., N. H. & H. R. R. Co., 107 I. C. C. 721.

> racy, by appraisal of the results, judge those actions to have been either necessary or unnecessary. We can also say whether they were or not "adequately justifiable" in the light of the results. To say, however, that they were improvident is to enter upon a field which is only in part amenable to "hindsight" exercised several years after the event. In order to determine what was reasonable providence in 1922 and what was improvidence one would have to replace himself mentally in the material and psychological conditions and atmosphere of 1922, and, omitting all reference to subsequent results, endeavor to decide what would be a normal exercise of human judgment under those conditions.[20]

Supervision of railroad expenditures is thus found to be a difficult duty to perform. It is further complicated by the fact that many expenditures when made are in anticipation of contingencies that do not materialize. Railroad managements are as likely to err as are other managements. It would be unfair and it would serve no purpose to label expenditures due to errors in judgment "extravagances." Moreover, if developments in railroads are to keep pace with developments in other industries their managements must be permitted wide latitude for experiment. The difficulty is not in ascertaining the facts as to railroad expenditures but in determining standards of reasonableness, and in applying such standards to individual expenditures. Commissioner Hall has said that the Commission is not dependent solely on railroad accounts for the means by which unreasonable expenditures may be discovered. Determination of whether or not excess amounts are being spent for particular purposes can often be reached by analysis of the returns, the Commission having kept in force substantially the same system of statistical reports of operations used by the Director General of Railroads during Federal

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[20] *Construction and Repair of Ry. Equipment* N. Y., N. H. & H. R. R. Co., *supra*, pp. 735-36.

Control. Furthermore, the monthly reports of carriers are examined and studied by others than the employees of the Commission, and various classes of persons who are interested in railroad economy and efficiency may scrutinize the results of operation. The Commission is confident that serious mismanagement would be promptly reflected in statistical analyses, and that if a particular road should fall into the hands of a dishonest management it would be quite improbable that such a management could so manipulate reports and accounts that all the numerous comparisons which the Commission makes would appear normal.[21]

Nevertheless, it cannot be reiterated too often that the making of expenditures involves judgment. Setting up standards of reasonableness of railroad expenditures may be helpful to the Commission in comparing performances of one road with another, or in comparing performances of the same road for different years, but such standards cannot be controlling. The different railroads operate under widely varying conditions and conditions in general change with the passing of time. Furthermore, it is not likely that different managements on the same road at the same time would pursue exactly the same policy with regard to expenditures. Where matters of judgment are involved opinions differ. Making expenditures for maintenance, as well as for other purposes, is the function of the various railroad managements. What the Commission would do under the same circumstances, not even the Commission could tell. It, moreover, is foreign to the considerations involved. That the Commission has no authority to constitute itself a board of directors for the railroads of the United States may be inferred from various decisions of the Supreme Court. In the Southwestern Telephone Company case the Court said:

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[21] Cf. Statement of H. C. Hall, *Hearings on the Repeal of Section 15a*, 68th Congress, 1st session, p. 671.

> It must never be forgotten that while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in *State Public Utilities Commission ex rel. Springfield Gas & Electric Company,* 291 Ill. 209, 234.
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> The Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation, nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.[22]

The Supreme Court, however, has recognized that abuses may, and do, occur in charges to operating expense by public utility companies, and that such charges are matters of public concern where the rates to be charged for the service are under the control of public commissions. The Court has held that:

> While the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call "operating expenses."[23]

Recently the Interstate Commerce Commission has had occasion to inquire into charges to operating expense by the St. Louis and O'Fallon Railway Company, especially because of the bearing of such charges upon the amounts of net railway operating income subject to recapture. In this case three matters were presented for consideration as having directly affected the net railway operating income:

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[22] *S. W. Tel. Co.* v. *Pub. Serv. Comm.,* 262 U. S. 276, 289.
[23] *Chicago, etc., Ry. Co. v. Wellman,* 143 U. S. 339, 346.

(1) A sum of money which the board of directors of the O'Fallon Company had voted should be paid to the president of that company. (2) A considerable increase in the compensation of the chairman of the board of directors. (3) The cost of operation and revenue derived from special train service in transporting miners between East St. Louis and the mines of the O'Fallon Coal Company at O'Fallon.[24] The sum of money ($25,000) which the O'Fallon Company had paid its president had been paid out of a sum of $28,000 which the O'Fallon had received from the East St. Louis and Suburban Railway Company in the readjustment of divisions on past shipments, and which the company claimed had been obtained largely through the "industry and diligence" of Mr. William Cotter, the president. The second item concerned an increase in the salary of Mr. August A. Bush, chairman of the board of directors of the O'Fallon, effective April 1, 1923, from $2,400 to $15,000 per annum, without it appearing in the record that the chairman of the board of directors then took any more active part in the operation or financial affairs of the company than formerly. This increase in salary had been made in contemplation of the continuance of increased divisions of joint rates in the future.

With regard to the payment to the president of the O'Fallon and the increase in the salary of the chairman of the board of directors the Commission found no other justification than "the availability of funds from the sources indicated." "Such radical increases in compensation for these positions," the Commission said, "over what had been paid for many previous years, require other justification than the mere availability of funds." In the light of the purposes of section 15a, and of the decision of the Supreme Court in the Dayton-Goose Creek case, that a railroad never receives a clear title to the excess above a fair return but is trustee for such amounts, the Commission held that it was

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[24] *Excess Income of St. Louis & O'Fallon Ry. Co., supra,* p. 12.

> improper for the O'Fallon to have diverted to "operating expenses" the portion of such trust fund represented by the increased compensation to the president and the chairman of the board of directors. . . . . We are without authority to direct the actual disposition of income of carriers, but in our computation of the amount of net railway operating income for the recapture periods we shall not include as charges to operating expenses the increases in compensation to the president and chairman of the board of directors of the O'Fallon during 1923.[25]

With regard to the third item considered the Commission found no undue charges to operating expense. For its authority to make adjustments of net railway operating income the Commission relied upon the provisions of paragraph 9 of section 15a which empowers it to "prescribe rules and regulations for the determination and recovery of excess income." "Without such authority," the Commission said, "there would be nothing to prevent virtual defeat of the recapture provisions by the diversion of funds through unwarranted charges to operating expenses." The Commission further held that it was not necessary to find that the O'Fallon Company in making charges "intended" to defeat the operation of the recapture clause; for whatever the intent, the excess income as determined by the Commission, is a trust fund in the hands of the carrier which never becomes its property.[26]

The ability of the Commission thus to detect flagrant abuses of managerial discretion and its authority to make allowances for them in calculations of excess income subject to recapture are demonstrated in the O'Fallon case. It has been ably contended also that such abuses are not likely to occur on a large scale. Mr. A. P. Thom, in hearings held on the repeal of section 15a, in 1924, testified before the

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[25] *Excess Income of St. Louis & O'Fallon Ry. Co., supra,* p. 16.
[26] *Ibid.,* p. 17.

Senate Committee on Interstate Commerce that it would be bad policy for a railroad to waste a whole dollar simply because it could not save more than half of it. Mr. Walker D. Hines told the Committee that no railroad can be so sure at the beginning of the year that it is going to earn enough to be subject to the recapture provisions that it can afford not to be careful and to try to keep all it can. The opportunity of keeping one-half the excess, he thought, should remove any tendency to extravagance. Moreover, expenditures for maintenance, unless they are excessive, are in the public interest, since the better a road is maintained, the better its service and the more economical its operation.

However, the mere policing of carrier accounts is but a small part of the duty placed upon the Commission by section 15a, which requires it to inquire into and inform itself as to "honest, efficient, and economical management." For the performance of this difficult and exacting task the Commission has meager resources. The work of the Bureau of Statistics and the Bureau of Accounts reflects carrier conditions which bear on honesty, efficiency, and economy of management. The Bureau of Service, in co-operation with carrier organizations and the Shippers' Regional Advisory Boards, collects a great deal of information which serves indirectly as a check on the management of railroads as a whole. The Bureau of Safety and the Bureau of Locomotive Inspection also indirectly promote efficiency and economy. Nevertheless, the Bureau of Accounts mostly supervises the keeping of accounts and the Bureau of Statistics accepts the accounts and compiles statistics based upon them. Differences in operating results between carriers may be disclosed, but the reasons for such differences can only be determined by investigation. The Bureaus of Safety and Locomotive Inspection were organized primarily for the purpose of promoting safety in operation and their findings bear only incidental relation to economy and efficiency in operation. Furthermore, these bureaus were all organized before 1920.

They have other duties of a definite nature to perform, and they have not been enlarged for the purpose of inquiring into honest, efficient, and economical management.

The Bureau of Service, established in 1920, was created, according to Commissioner McManamy,[27] to meet the requirements of paragraphs 10 to 17 of section 1 of the Interstate Commerce Act. Its duties relate mostly to car service and the handling of traffic which are only indirectly related to the requirements under section 15a, since a carrier may have sufficient equipment to furnish adequate service and still not be an efficient or economical transportation organization. The Commission, however, has established a section of efficiency and economy within the Bureau of Service whose function it is to co-ordinate information as to car service with other information in studies of efficiency and economy. This section has carried on, or is now carrying on, investigations covering the excess costs of repairs to locomotive equipment in shops other than those of the carriers, investigations covering excess expenditures for rental of equipment, and others of a similar nature.

In the various hearings on section 15a that have been held the impression has been pretty generally established that the Commission does not have the men, nor the facilities to ascertain directly the facts in reference to railroad expenditures so as to advise the public and Congress as to needless operating expenditures. Regulation of railroad expenditures with regard to honesty, efficiency and economy in operation, as contemplated in section 15a, is for the Commission under its present personnel and with present appropriations an insuperable task. As Commissioner McManamy has said, the Commission has men that can do the work, but not a sufficient force. Whether or not the results obtained from a complete and detailed supervision over railroad manage-

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[27] Cf. Statement of Commissioner McManamy, before the Senate Committee, *Hearings on the Repeal of Section 15a, supra.*, p. 676.

ments by the Commission would warrant the additional appropriations necessary is, however, at best an open question. In testifying before the Senate Committee in 1924, Commissioner McManamy seemed to think that an effective organization for the purpose could be created without the necessity of large appropriations due to the fact that such an organization could greatly profit by co-operating with the railroads and with shippers' organizations. On the other hand, it is the opinion of the majority of the Commission that section 15a does not require such thorough-going supervision of railroad expenditures. In its annual report for the year 1922, the Commission said:

> To go into the question of efficiency of management in a thoroughly effective way would necessitate an organization of experts especially qualified to investigate the numerous and complex phases of railroad management, such as shop methods, locomotive performance, road and terminal operation, maintenance of way and structures, purchasing, and many others. This would involve a large additional appropriation and would in some degree duplicate the work of the technical staff of the railroads. We have not been convinced that we are called upon to engage in the study of operating efficiency upon this elaborate plan. We have undertaken, however, to emphasize to a greater degree than heretofore the systematic comparison of operating results through statistical reports.

We must conclude, therefore, that although the Commission can detect instances of gross mismanagement, as it did in the O'Fallon case, for the greater part it must depend upon the presumption that the railroads of the United States, with few exceptions, are honestly, efficiently, and economically managed. It may follow, nevertheless, that such a presumption is not far from the truth in so far as the railroads as a whole are concerned. Mr. Julius H. Parmelee, director of the Bureau of Railway Economics, a bureau which devotes a great amount of study to efficiency

and economy in railroad operation, in a pamphlet entitled, "Review of Railway Operations in 1927," had this to say:

> A survey of the various factors of efficient railway operation clearly indicates a progressive gain year by year since 1923, when the railways put into effect a specific program looking to more effective performance. This progressive improvement in efficient operation is primarily the result of the program of 1923, consistently followed during the past five years. . . . . The railways since the beginning of 1923 have invested more than four billions of new capital in their properties, have received a fine measure of co-operation from shippers and the general public through the extension of the shippers' advisory board movement, and have continued to receive the loyal support of a large proportion of their employees.

In the same pamphlet Mr. Parmelee referred to the report of the Secretary of Commerce for the fiscal year 1926-27, in which the Secretary had commented on the steady improvement in railway service during the last few years, and had said:

> The chronic car shortages of former years have been overcome. The proportion of rolling equipment in bad order, both cars and locomotives, has been greatly cut down; in this respect the fiscal year 1926-27 marked the most satisfactory situation reported for many years. The tonnage per train has been increased. More important still from the standpoint of the general public welfare, delays in the movement of traffic have been greatly reduced. The expedition of railway service has reacted favorably upon the entire economic structure. It is estimated that the rapidity of freight transportation is now from 30 to 40 per cent greater than at the close of the war.

On the whole the critics of section 15a, and especially of the recapture clauses, have not charged wholesale dishonesty or inefficiency in railroad management. They have pointed

to individual cases of excessive expenditures, cases which the Commission is well able to handle. The failure of the recapture clauses to operate as it was contemplated they would operate has not been due to the avoidance of recapture by extravagant expenditures, but to the lack of valuations for railroad properties. When the valuation problem shall have been settled the recapture clauses will function. As a matter of policy they must be retained in the law. The rule of rate-making in section 15a has come to be generally recognized as a necessary principle in rate regulation. There is practically no opposition to that rule. The bill introduced into the last Congress by Representative Newton, embodying the recommendations of the National Industrial Traffic League, while proposing that the recapture clauses be repealed suggested only that the section should provide instead of a "fair return on the value of the property" that the carriers be given an "opportunity to earn an average annual net railway operating income sufficient, as nearly as may be, to pay the interest on funded and other outstanding indebtedness and to provide such return upon the properties devoted to public use not represented by indebtedness, as shall in the judgment of the commission maintain a proper basis of credit to enable the carriers as a whole to meet the transportation needs of the country." The principle of the rule of rate-making is thus fully accepted.

But the rule of rate-making can not be retained without the recapture clauses where there exists such wide-spread disparity in earning power of railroads. The public generally would not tolerate rates adjusted in the interests of the weak or of the average carriers when such rates would give to their strong competitors inordinately high incomes, all of which they would be entitled to keep. It is the equalization feature involved in the recapture clauses that makes them the "key provisions" of the whole system of rate-making embodied in section 15a; that is, that rates shall contribute revenues sufficient to maintain the whole trans-

portation system, and that excess earnings shall be taken from strong carriers to be used in helping weak carriers provide an adequate transportation service. The defect in the law as it stands is that the uses of the general railroad contingent fund are so closely restricted that the fund can not be of service to the weak carriers. The recapture provisions do not constitute a complete solution of the weak road problem. They do not strike at the roots of weakness in railroads. But recaptured earnings can be made of service to the weak carriers, pending final solutions of the weak road problem, by proper changes in the provisions relating to the use of such earnings.

CHAPTER V

CONSOLIDATION AS A SOLUTION OF THE WEAK ROAD PROBLEM

It was the hope of Congress, in 1920, that the ultimate solution of the weak road problem would be found in the consolidation of all the railroads of the United States, both strong and weak, into a limited number of systems, so arranged under the guidance of the Interstate Commerce Commission that in competition with each other and employing uniform rates the various systems would be capable of earning the same rate of return upon the value of their respective railway properties. In this way the disparity in earning power of different railroads would be removed and the problem of rate-making simplified. That consolidation has been adopted as a definite policy on the part of Congress in dealing with the transportation problem or problems there is no doubt. Both the railroads and the Commission have construed section 5 of the Interstate Commerce Act, as amended by the Transportation Act of 1920, to be the declaration of such a policy.[1] Furthermore, the President of the United States, in his annual messages to the Sixty-eighth and Sixty-ninth Congresses has called attention repeatedly to the necessity of making the law contemplating consolidations sufficiently effective to produce expeditious action. However, more than nine years have elapsed since the passage of the Act and so far little progress has been made towards the goal of a limited number of systems.

There have been no consolidations of carriers into a single system for ownership and operation. The consolidations that

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[1] Compare the statements of Commissioner H. C. Hall and Mr. A. P. Thom before the House Committee on Interstate and Foreign Commerce, *Hearings on H. R. 11212,* 69th Congress, 1st session.

have been effected have been in the nature of authorizations by the Commission of control of one carrier by another under paragraph 2 of section 5 of the Act. This paragraph provides that:

> Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the Commission, by one of such carriers of the control of any other carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

In Appendix B may be found a complete list of the unifications effected under paragraph 2 of section 5. The list includes many important acquisitions of control by one carrier of another through stock ownership or by lease, such as the control by the Southern Pacific Company of the Central Pacific Railway Company and that by the Missouri Pacific Railroad Company of the Denver and Rio Grande Western Railroad Company, but the mileage involved is but a small fraction of the total mileage. Up to September 30, 1928, the total mileage brought under control of other carriers was 43,129 miles of road.

Regarded from the viewpoint of a program having as its objective the consolidation of all railroads into a limited number of systems the accomplishments of the consolidation policy of Congress have fallen far short of expectations. Of course, most of the larger railroads of the United States had already been consolidated into huge systems when the Act of 1920 was passed. In a sense, the consolidation provisions

of that Act had merely aimed to continue and to make more definite and purposive the consolidation activities which the railroads themselves were carrying out. A special committee of the United States Chamber of Commerce reported that, in 1922, although there were over 1600 operating and lessor companies in the United States, 22 systems or system groups received 85 per cent of the total operating revenues of all railroads.[2] But the consolidation program has been a failure in that consolidations have not proceeded in the manner that Congress had hoped they would. Most of the weak and the short lines that Congress had hoped would be taken over by strong systems are still in independent operation.

The failure of the consolidation program has not been due to any one cause. Numerous technical and administrative difficulties have militated against its successful accomplishment. There are defects in the original act and limitations placed upon the powers of the Commission that have greatly hampered its activities. The Act of 1920 provided that the Commission should proceed at once to divide up the railroads of the United States according to a definite plan, and that after hearings upon a tentative plan it should adopt a complete plan of consolidation which should be the guide to all consolidations thereafter. The Commission proceeded immediately to carry out the commands of Congress and in 1921 issued an order outlining a tentative plan[3] which had been drawn up largely by Professor William Z. Ripley, of Harvard University, who had been called in as expert. The Commission held hearings on the tentative plan over a period of years, in Washington and in many other cities. Representatives of the railroads presented elaborate statistical exhibits with regard to operating, traffic, and financial matters that would have a bearing upon the pro-

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[2] *Report of Special Committee II*, appointed by the President of the Chamber of Commerce of the United States, Nov. 6, 1923.

[3] *Consolidation of Railroads*, 63 I. C. C. 455.

posed plan, and representatives of chambers of commerce, trade, and traffic organizations, and of municipal and state authorities appeared at the hearings to present the views of shippers and of local officials. The time and energy spent in the hearings, however, have been of no avail, except for the fact that the Commission has accumulated a vast amount of information not formerly available regarding the situation and the conditions surrounding the operation of all the principal railroads of the country. No complete and final plan of consolidation has been adopted.

It early became apparent to many observers that the determination of a complete plan to act as a guide to the Commission in authorizing consolidations was impracticable. The feeling became quite general when after years of hearings and work on such a plan the Commission seemed no nearer a final solution than it was in the beginning. President Coolidge, in his message to Congress at the beginning of the second session of the Sixty-eighth Congress, gave expression to the general opinion when he said:

> The consolidations need to be carried out with due regard to public interest and to the rights and established life of various communities in our country. It does not seem to me necessary that we endeavor to anticipate any final plan or adhere to the artificial and unchangeable project which shall stipulate a fixed number of systems, but rather we ought to approach the problem with such a latitude of action that it can be worked out step by step in accordance with a comprehensive consideration of public interest. Whether the number of ultimate systems shall be more or less seems to me can only be determined by time and actual experience in the development of such consolidations.

The Commission itself has long been convinced of the impracticability of pre-arranging a plan for consolidation. In its annual report for 1925 the Commission expressed an opinion favoring the permitting of consolidations to take place in a more "normal" way. A pre-arranged plan might

not be feasible from a financial standpoint, and thus prove an obstacle, rather than an aid, in carrying out the desires of Congress. In the report for 1925, and in each annual report since, the Commission has prayed to be relieved of this duty. On February 4, 1925, the Commission addressed a letter to the chairman of the Senate Committee on Interstate Commerce in which there was expressed grave "doubt as to the wisdom of the provisions of the law" which now required them to adopt such a plan for all future consolidations. "Results as good, and perhaps better," the Commission said, "are likely to be accomplished with less loss of time if the process of consolidation is permitted to develop, under the guidance of the Commission, in a more normal way."[4]

The necessity under which the Commission has labored of drawing up a complete plan of consolidation has done more than anything else to retard the consolidation program. However, there are other defects in the present law that have prevented the consummation of consolidations on the scale contemplated in 1920. Consolidation, as it is termed in the Act and as distinguished from acquisition of control of one carrier by another under paragraph 2 of section 5, contemplates consolidation "into a single system for ownership and operation." Acquisition of control through lease, use of rails through trackage rights, and acquisition of control through purchase of capital stock are thus excluded. Commissioner Hall, appearing before the Senate Committee on Interstate Commerce, January 9, 1928, said that such requirements injected into the problem a rigidity not inherent, and which is counter to the historical development of the great railroad systems of the United States. Historically, he said, consolidation into a single system for ownership and operation has been the least used form of consolidation known to those who are engaged in railroad

[4] *Thirty-ninth Annual Report* of the I. C. C., 1925, p. 13.

transportation. Under the present law, as each additional railway property should be added to a given system there would be necessitated a considerable modification in the case of that particular corporation. The restriction of consolidation to the form contemplated in the Act, he contended, constitutes a needless interference with the progress of consolidation. In the light of experience it introduces obstacles to consolidation which did not previously exist.[5]

A third obstacle to consolidation in the existing statute is the provision that as soon as the Commission receives an application for consolidation it must proceed at once to determine the value of the railroad properties entering into the proposed system, since the Act provides that the capitalization of the new system must not exceed the combined values as determined by the Commission. As was shown in Chapter III, the Commission's work under section 19a is only nearing completion, and the Commission, moreover, has interpreted the values under section 19a to be values for rate-making purposes. A valuation for consolidation purposes may well be different from such a valuation. Section 19a does not take into account the value of railroad property not devoted to common carrier purposes, but such property must be taken into consideration in determining the valuation, and thus the capitalization, of a new consolidated system. Property of this type constitutes an important source of income for interest and dividend purposes to many of the larger railroad systems. To illustrate, during the period of Federal control the New York Central system had an income of more than $10,000,000 annually outside of that which it received and was entitled to receive from the Director General of Railroads.[6] The problem of determining values for consolidation purposes ultimately may not be an obstacle to consolidation, but with valuation

[5] Cf. Statement of Henry C. Hall, *Hearings on S. 1175*, 70th Congress, 1st session, pp. 28-29.

[6] Cf. Statement of Henry C. Hall, *supra*, p. 30.

work in its present state it promises to delay for some time the consummation of a nation-wide program of consolidation.

The difficulties in carrying out a consolidation program such as that outlined by Congress are not confined to the provisions of the law, however. The plan which the Commission was instructed to draw up was to embrace all the railroads of the United States. Although the law did not specifically provide for the inclusion of all roads, both the terms of the Act of 1920 and the declared purpose of establishing and maintaining an adequate transportation system did not permit any exclusion. Such a program involves the consolidation of weak carriers with strong carriers and raises the question of its practicability. It was anticipated, in 1920, that many obstacles would confront those who should attempt to consolidate all the railroads into a few systems, especially with regard to the inclusion of weak carriers, and there was considerable support for a program of compulsory consolidation. The bill drawn up by the Senate Committee, and which passed the Senate, provided for the consolidation of the railroads of the whole country into not less than twenty nor more than thirty-five systems, and that consolidation should be permissive only for a period of seven years from the passage of the Act, after which it was to be compulsory. The compulsory feature of the Senate bill, however, was lost in conference, and Congress launched out upon its program of consolidation, definitely aimed at caring for the weak roads, confident that consolidation would be effected voluntarily by the railroads.

Any conclusion with regard to the effects upon the weak road problem as a result of the unifications which have been authorized since 1920 would be immature. Some weak roads have been taken over by strong systems, but acquisitions of control under paragraph 2 do not constitute consolidations, and it may well be that the working out of consolidations under the present law, or under amended provisions, will make many changes in present alignments. Meanwhile, in

the numerous hearings which have been held by the committees of both houses of Congress the matter of the importance of weak roads as a consolidation problem has been the subject of much controversy. Senator Cummins, in 1926, estimated that there were then in the United States 60,000 miles of main-track railway that were not self-sustaining. A similar estimate was incorporated into a report to the Senate, April 5, 1926, by the Senate Committee on Interstate Commerce. In this report the Committee said:

> The net railway operating income of all the railways in the United States was, in 1922, $769,411,093; in 1923, $974,917,715; in 1924, $987,123,417. . . . . If all the railway properties were owned by a single corporation, this net railway operating income for 1924 would have paid more than 5 per cent upon the value of these properties, as tentatively determined by the Interstate Commerce Commission in 1920, with the capital investments since that time added. . . . .
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> When, however, we inquire with respect to the distribution of this aggregate net operating income, we come to the real question involved in the policy of consolidation. . . . .
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> First, it may be said that the 22,000 miles of Class II and Class III roads, as a whole, barely earned operating expenses although there was moved a greater tonnage in each of these years than ever before. . . . .
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> Seventy railway companies of Class I, operating over 54,000 miles for the years 1922, 1923, and 1924 had an average net railway operating income of less than 3 per cent upon their property investment accounts. . . . . Twenty-one of these companies did not earn the cost of operation and maintenance. It is obvious that a railway company which earns less than the expense of operation and maintenance must very quickly cease operation, and it is equally obvious that a railway company which does not earn 3 per cent upon its value can not furnish adequate and efficient transportation for those who rely upon it for that service. . . . .

> It is submitted as an inevitable conclusion, that if a process of wise consolidation is not soon entered upon and rapidly carried forward, not less than 60,000 miles, and it may reach 80,000 miles, of our rail transportation system must be either abandoned or, at the best will be rendering, the most unsatisfactory and inefficient service.[7]

Mr. R. C. Fulbright, Chairman of the Legislative Committee of the National Industrial Traffic League, in testimony before the House Committee, January 27, 1928, contended that the estimate made by Senator Cummins, in 1926, must be reduced, since it included a number of roads which were not standing alone but were already parts of other systems. Going over the roads in the Southwest, called weak by Senator Cummins—15 railroad corporations with an aggregate mileage of 15,342—he showed that all but 1,630 miles was owned or controlled by the major systems in the Southwest which Senator Cummins himself had called the strong systems, such as the Southern Pacific, the Burlington and the Frisco. Furthermore, he said, the importance of weak roads is exaggerated. He presented evidence to show that in 1926 the 33 largest railroad systems, including the mileage in this country of two Canadian systems, operated 88.25 per cent of the operated mileage of the country. Their operating revenues comprised 91.1 per cent of the total for the whole transportation system, the volume of freight handled by them 90.3 per cent of the total, and their revenue passenger miles 94.75 per cent of the total. Hence, the traffic of the short and weak lines does not constitute a very large percentage of the total.[8]

On the other hand, Ben B. Cain, of the American Short Line Railroad Association, testifying before the same committee, said that the importance of the weak and short

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[7] Committee on Interstate Commerce of the U. S. Senate, report on S. 3884, 69th Congress, 1st session, quoted from statement of Ben B. Cain, *Hearings on S. 1175*, 70th Congress, 1st session, p. 219.

[8] Hearings on H. R. 5641, 70th Congress, 1st session, p. 214.

lines is only appreciated when the origination of traffic is considered. The 33 systems referred to by Mr. Fulbright, he said, originated only 77 per cent of the total revenue tonnage hauled in 1926, the short and the weak lines having originated 23 per cent. Take away 23 per cent of the total tonnage by destroying the weak roads and the entire transportation system might be ruined. Mr. Cain contended that the weak road problem is as important today as it was in 1920. There are now in the United States, he said, 22,109.6 miles of Class II and Class III railroads, and there are 30,418.14 miles of weak roads within Class I. All told, there are about 52,590 miles of railroads in the United States, upon which several millions of people are dependent for transportation service, and for which some provision will have to be made. The short lines are in the same situation as the weak lines, there is no difference. Although some of the short lines are prosperous, they have a precarious existence in competition with strong roads, due to the superior bargaining power with shippers of the larger systems.[9]

A further observation should be made with regard to weak railroads. As time goes on some weak carriers grow out of their weakness. The Missouri Pacific which was classed as a weak road in 1922 has definitely risen out of the weak class. Moreover, marked changes take place in the condition of weak roads in general from time to time. Dr. C. S. Duncan pointed out to the House Committee, in 1926, significant changes in revenues and in the net railway operating income in a group of 46 carriers which, in 1922, Senator Cummins had called weak. The aggregate mileage of this group, in 1922, was 42,509 miles of road. In 1922 the aggregate net railway operating income, less deficits, of the group was $32,110,696; in 1923 it was $63,857,327; in 1924, $74,545,693; and in 1925, $82,828,387. The number

[9] *Ibid.*, p. 404.

of roads within this group showing deficits were 18 in 1922, 9 in 1923, 11 in 1924, and 7 in 1925. The significance of such changes is that no extensive group of railroads can be permanently classed as weak roads.[10]

Comparing recent testimony before the committees of Congress with the testimony offered in 1919 we must conclude, however, that the position of most short and weak railroads has not been altered substantially under the operation of the consolidation provisions of the Act of 1920. The Interstate Commerce Commission, with regard to proposed or suggested unifications, has repeatedly called attention to the importance to the public of the service of weak carriers, and to the failure of many proposals to provide adequately for necessitous weak roads. In the recent Nickel Plate Unification case, the Commission said:

> But the importance of the problem of the short lines in their relation to this subject (consolidation) can not be too strongly emphasized. One of the chief criticisms of the unifications which have been proposed or suggested has been that certain of them do not embrace related weak lines, although the union of the weak with the strong lines is one of the ends which Congress apparently had most definitely in mind. When these unifications are being considered the problem of the short lines whose property in the public interest should be included in the systems proposed can not be overlooked if it is possible to include them upon reasonable terms. In this instance little or no consideration was given to the short-line connections of the lessor companies in the preparation of the plan, but on the contrary, as has been pointed out, it is proposed to leave out some of the weaker units of the Erie. It is apparent that such a policy nullifies one of the intentions of Congress in enacting this legislation. Every applicant should assume the burden of making reasonable provision in its plan for the

[10] Cf. Statement of Dr. C. S. Duncan, *Hearings on H. R. 11212*, 69th Congress, 1st session, pp. 26-8.

> possible incorporation of every connecting short line now in operation in the territory covered or to be covered by the proposed grouping or unification. No branch line or short line now in operation within the territory in question should be left out of the consideration unless by affirmative testimony the abandonment of operation of such line or its omission from the plan has been justified.[11]

Although it is the conclusion of the Commission that in the proposed unifications thus far the weak lines generally have not been taken care of, there are instances in which strong lines have assumed control over weak lines by authority of the Commission. Such cases present splendid evidence of the good which may come of consolidation of weak with strong roads. An excellent example is the case of the acquisition of control of the Cincinnati, Indianapolis, and Western by the Baltimore and Ohio. Until very recently the Cincinnati, Indianapolis, and Western has been a weak railroad; its earnings have been scarcely sufficient to maintain it in independent operation. When the Baltimore and Ohio took it over they proceeded immediately to spend large sums of money to rehabilitate and improve the Cincinnati, Indianapolis, and Western so that it could operate less expensively. According to the statement of Mr. Willard, president of the Baltimore and Ohio system, it is still a weak railroad, but the Baltimore and Ohio has put standard equipment on it and is now running through trains over it and using it as part of the system. Ultimately it may become a strong contributor to the earnings of the whole system.[12]

The acquisition of control of a weak road by a strong system is bound to affect favorably the position of the weak road. A weak road because of its weakness can not furnish adequate equipment, or equipment to operate economically. It usually has a poor roadbed, and is under-maintained, and it cannot furnish facilities that will induce industries to

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[11] *Nickel Plate Unification*, 105 I. C. C. 425, 449, decided March 2, 1926.
[12] *Hearings on H. R. 5641*, 70th Congress, 1st session, p. 405.

locate on its line in preference to stronger lines. Strong roads can supply these necessities and can lend their credit to weak roads which they take over. Moreover, there are instances in which the consolidation of what formerly were weak roads has resulted in the creation of relatively strong systems. Dr. C. S. Duncan told the House committee, in 1926, that at the time the Nickel Plate, the Lake Erie and Western, and the Clover Leaf were consolidated those roads were weak roads, but being combined they have risen out of the weak class.[13] Mr. Thom testified before the same committee that Mr. Henry Walters, former president of the Atlantic Coast Line, a most successful railroad, had often said that that line is made up of a large number of small lines, and that if each one of them were independently operated, it would hardly be self-sustaining.[14]

The improvement in the service of weak lines through consolidation in individual cases has been of great significance to the shippers using those lines. The problem remains, however, of caring for numerous short and weak lines whose value to other systems is questionable. A road that is weak in independent operation may become a valuable feeder to a large system. It may be desirable to extend that line into new territory to develop new traffic, or to utilize it in some other than its present use. But it may become a parasite that would sap the strength of the main system. At the time the Baltimore and Ohio took over the Cincinnati, Indianapolis and Western, another weak road, the Chicago, Attica, and Southern, intervened, urging that it be taken into the same system. However, the Commission felt that it was enough, at least for the time being, for the Baltimore and Ohio to take up one weak road, and it imposed no condition upon the Baltimore and Ohio with regard to the Chicago, Attica, and Southern. The problem thus resolves itself into one of individual weak railroads; into

[13] *Hearings on H. R. 11212*, 69th Congress, 1st session, p. 46.
[14] *Ibid.*, p. 357.

a study of weakness in individual cases, for the causes of weakness have a significant bearing upon the consolidation situation.

With regard to the causes of weakness in railroads the testimony presented before the Senate and House committees in numerous consolidation hearings, the evidence presented to the Interstate Commerce Commission in hearings on applications for authority to abandon whole lines, or parts of lines, and the findings of competent students all show that those causes are numerous. The work done by Mr. Oldham demonstrates beyond dispute that the principal cause of weakness in the larger, non-dividend-paying systems lies in the size and form of their financial structures. The problem with such roads is one of financial reorganization. Such reorganizations might take place through consolidation by adjustment of the financial structure of the consolidated company to the aggregate values of the constituent companies as determined by the Commission, but financial reorganization could better take place outside of consolidation, at least it should not constitute a sole reason for consolidation. In the smaller roads, which after all create the most difficult consolidation problems, the causes of weakness are many.

A study of the abandonment cases which have been decided by the Commission since 1920 throws much light upon the causes of weakness in short roads and branch lines. From 1920 to May 1, 1925, certificates for abandonment of 120 lines and branches, aggregating 2,439 miles, were issued. These included 41 lines of railroad aggregating 1,610 miles and 79 branches aggregating 829 miles.

The primary cause of weakness in 57.8 per cent of the total mileage abandoned was found to be the exhaustion of natural resources, for the exploitation of which the lines had been built. Competition of other lines was the principal cause of weakness in 29.3 per cent of the mileage, competition of motor vehicles in 4.3 per cent, rearrangement of

lines of road in 1.3 per cent, and miscellaneous causes in the rest of the mileage.[15] Examination of the cases decided since 1925 shows that similar causes have been responsible for the applications for abandonment. Among the miscellaneous causes are found excessive operating expenses which have been due to heavy grades, sharp curves, a dangerous wye, etc.,[16] declining traffic and a sparsely settled territory,[17] the use of water transportation exclusively by the industries in the territory,[18] and in one case the failure of traffic to develop on a piece of line built to discharge a promise made to certain business interests.[19]

In cases in which the weakness is due to high operating expenses occasioned by heavy grades, sharp curves, or poor roadbed and equipment, the cost of rehabilitating the weak lines would be passed on to the strong lines by consolidation. In cases in which weakness is due to light traffic, unless the territory affords possibilities of development, consolidation would also burden the strong lines. It is understood, of course, that the contribution to the earnings of a system by a weak line would consist of more than the earnings for the haul to the junction point. If traffic which should originate on a weak line should be carried a long distance towards destination or to destination over the main lines of the system, the weak line would contribute to earnings not only to the extent of the service performed to the junction point, but to the extent of the longer haul. Furthermore, the greater transportation capacity of the large system would make possible a more effective development of the territory of feeder lines. Nevertheless, it is inevitable that a com-

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[15] *I. C. C. Docket*, No. 18300, p. 37.

[16] *Abandonment of C., O. & G. R. R.*, 111 I. C. C. 81; *of S. P. Co.* 111 I. C. C. 577; *of Branch of P. M. R. R.*, 105 I. C. C. 817; *Construction by M. & R. R. R.*, 117 I. C. C. 727; and other cases.

[17] *Abandonment of E. K. Ry.*, 111 I. C. C. 476; *of Branch Line by T. & N. O. R. R.*, 131 I. C. C. 1; *of B. G. R. R.*, 131 I. C. C. 513; and other cases.

[18] *Abandonment by Y. H. & B. R. R.*, 117 I. C. C. 695.

[19] *Abandonment by C., B. & Q. R. R.*, 117 I. C. C. 637.

plete consolidation program should in many cases throw a heavier burden upon certain strong systems. Will strong systems voluntarily accept such an added burden?

Under a program of voluntary consolidation each case will be decided from the standpoint of its commercial and financial justification. Judge Lovett, chairman of the board of the Union Pacific, before the House Committee on Interstate and Foreign Commerce, in 1926, gave it as his opinion that most of the weak roads could be taken care of if they would take a fair price for their properties. The determination of railroad property values, he said, is in the hands of the Interstate Commerce Commission, but if the Commission should place a value on a weak road higher than the strong road which is expected to take it over should deem its earnings to warrant, the strong road would scarcely consolidate with it on the chance of being permitted to earn a fair return on the aggregate value of the properties.

Assuming that no strong road is willing to take over a weak carrier which the Commission believes ought to be taken care of in the public interest, does the Commission have at its disposal means by which such a consolidation might be compelled? Under the Act of 1920 consolidation into a single system for ownership and operation is subject to the approval of the Commission, but no such consolidations have been effected and none are likely to be without some change in the law, especially with respect to the requirement that consolidations be in harmony with a plan adopted by the Commission. However, in cases of applications by certain carriers for certificates to acquire control of other carriers the matter of making provision for weak carriers has again and again been brought up. In paragraph 2 of section 5 it is provided that the Commission may approve and authorize acquisitions of control "under such rules and regulations" and on "such terms and conditions" as shall be deemed reasonable by the Commission. It has been contended that the Commission's power to prescribe

rules and regulations and terms and conditions is broad enough to compel the inclusion of necessitous weak carriers in arrangements involving the acquisition of control of one carrier by another, but the Commission has never interpreted these provisions as specific authority to include certain carriers within such unifications. In the case of the application of the Illinois Central for control of the Gulf and Ship Island the Commission said:

> . . . . In the absence of legislation authorizing or requiring compulsory consolidation we are not inclined to assert that we have authority under an application of this nature to compel an applicant to acquire and maintain a connecting carrier. This conclusion makes it unnecessary to consider whether such a condition would be just and reasonable.[20]

In one case under paragraph 2 the Commission imposed conditions requiring the protection of a short line. This was in connection with the application, above mentioned, of the Illinois Central for control of the Gulf and Ship Island. A small railroad, the Columbia, Fernwood and Gulf, had intervened, insisting that if the Illinois Central be permitted to take over the Gulf and Ship Island it should be required to take over also the Columbia, Fernwood and Gulf, otherwise the loss of traffic to the latter road which would ensue as a result of the unification of the Gulf and Ship Island and the Illinois Central would necessitate its abandonment, and shippers would be deprived of a transportation service. The Commission did not go so far as to require that the Illinois Central take over the Columbia, Fernwood and Gulf, but it approved the application to take over the Gulf and Ship Island under certain conditions. In order that the shippers on the Columbia, Fernwood and Gulf, who might be without means of transportation if its lines were abandoned, should receive protection, a condition was imposed that the existing through routes and joint rates be preserved, and

[20] *Control of G. & S. I. R. R. Co.*, 99 I. C. C. 169, 172-3.

that the divisions of the Fernwood Company should not be decreased except upon order of the Commission. A further condition was imposed that

> . . . . if the operating revenues of the Fernwood Company shall at any time become insufficient to pay its operating expenses the Illinois Central upon the request of the Fernwood Company shall establish and maintain reasonable and adequate service over the line of the Fernwood Company, upon such terms and conditions as may be agreed upon by the parties, until such time as the Commission shall, under appropriate proceedings, authorize abandonment of such service on the railroad of the Fernwood Company.[21]

The above conditions were imposed to protect the shippers on the Fernwood Company's lines, that company having contended that the accomplishment of the proposed unification without the inclusion of the Fernwood's lines would mean its extinction as a common carrier. The Illinois Central has since contended that the Commission has no authority to impose such conditions, although it has not carried the matter to the courts.

The matter of prescribing conditions for the protection of the short line connections of large systems was an important issue in one of the most recent unification cases before the Commission, the New York Central Unification,[21a] decided January 14, 1929. In all, it was stated, there were 71 short lines, including lines not exceeding 500 miles, but excluding lines owned, controlled, or operated as parts of general railroad systems, which connected with the New York Central Lines. Of these, nine intervened to protect their interests. No propositions were made to the management of the New York Central on the part of the 62 non-intervening short lines, consequently the Commission presumed that those carriers and the public served by them were content with

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[21] *Control of G. & I. R. R. Co., supra,* p. 173.
[21a] *Finance Docket No. 5690,* I. C. C.

present conditions and dismissed them from further consideration.

On behalf of the intervening short lines, officers of the companies, citizens and representatives of various organizations and industries in the several territories adduced evidence to show that these lines logically should be allocated to the New York Central Lines. They pointed out, further, that there was public need of the services performed by these short lines, that they must be strengthened if they were to continue in operation, and that failure to include them in the proposed unification would seriously jeopardize the future of their services. The applicants responded to this evidence by pointing out the poor physical condition of several of the short lines, the cost to the New York Central of rehabilitating them to system standards, the uncertainty of the future traffic of certain ones due to motor-vehicle competition, and the difficulties in the determination of any satisfactory basis for the acquisition of these properties by the New York Central.

The Commission found with regard to six of the interveners that the preservation of their lines was required "by public convenience and necessity and for the maintenance of an adequate transportation system, as conceived and provided for by the transportation act," and that these lines were shown to be complementary to and properly apportionable to the New York Central system. Accordingly, the Commission laid down as an "express condition," to be fulfilled before it would authorize the unification proposed, that the New York Central offer to acquire the specified lines

> . . . . for considerations equal to the commercial value of the respective properties as determined by agreement between the parties, or by arbitration . . . . and provided further, that the right to determine bona fide compliance with the foregoing condition is hereby expressly reserved in us; and further provided, that acceptance of and

> compliance with the conditions precedent herein prescribed shall not be interpreted as relieving the New York Central from the further operation of the law respecting consolidations or as excusing that carrier from further responsibility for the representation made on its behalf that on appropriate occasion for considering the inclusion of so-called short-line railroads, these matters will be approached by the New York Central in a spirit of co-operation looking to their solution with all due regard to the public interest.[22]

The Commission prescribed the above conditions to its authorization of the unification even though it was persuaded that the fulfillment of them would throw an added burden upon the New York Central system. In the case of the Boyne City, Gaylord and Alpena Railroad, for example, it was shown that this was a timber line facing the exhaustion of its chief source of traffic; yet the Commission held that it should be taken over by the New York Central in the belief that its service was necessary to a territory in a state of transition from specialized industry to industrial diversification.[23] Again, the Commission realized that taking over the Chicago, Attica and Southern Railroad would cost the New York Central a considerable sum to rehabilitate it, and would result in additional annual expense to the latter road, due to higher standards of maintenance, the application of standard wages, etc. Nevertheless, it was convinced that the lines of the Attica could not be operated successfully as an independent road, and that they should be preserved in the public interest by unification with the New York Central Lines.[24]

What the courts might do with such conditions imposed by the Commission, it is impossible to forecast. The device has been little used to compel the inclusion of short lines

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[22] *Ibid.*, p. 42.
[23] *Ibid.*, pp. 20-21.
[24] *Ibid.*, pp. 24-25.

in proposed consolidations, and the Commission holds that the law is lacking in this respect. As a device it is a negative, rather than a positive, one. The Commission can not compel consolidations; the initiative must be taken by the railroads. In cases in which the benefits to be attained through a proposed unification would outweigh the disadvantages attendant upon the inclusion of a weak carrier, the imposition of conditions by the Commission might indirectly compel strong systems to take over weak roads. But in cases in which the converse would prevail the imposition of such conditions would tend to obstruct, not facilitate, the progress of consolidation.

The obstacles to consolidation in the present law, and the inherent difficulties in carrying out a program that involves the consolidation of weak with strong carriers, have led the Commission to recommend that Congress amend the consolidation provisions of the Act of 1920, especially with regard to the problem of the weak roads. The recommendations of the Commission are summarized on pages 13 and 14 of its thirty-ninth annual report to Congress. They have been further stated by Commissioner Eastman before the Senate Committee on Interstate Commerce, January 22, 1926. Briefly the Commission recommends that an amendment be adopted which

> 1. Relieves the commission from its present duty of adopting a complete plan of consolidation.
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> 2. Makes unlawful any consolidation or unification in any form, direct or indirect, except with the specific approval and authorization of the Commission.
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> 3. Gives the commission broad power to approve or disapprove such consolidations or unifications as may be proposed and to make such modifications and attach such terms and conditions prior to approval as it may find just and reasonable.
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> 4. Specifically authorizes the commission to disapprove a consolidation or unification upon the

ground that it does not include a carrier that ought to be included and can be included upon reasonable terms.

5. Specifically authorizes the commission to make it a condition of any consolidation or unification that existing routes and channels of trade and commerce shall be maintained.

6. Authorizes the commission to utilize, in reaching its conclusions with respect to any consolidation or unification proposed, all records and other evidence heretofore taken and now in its files, under the terms of the section as heretofore enacted.

7. Modifies the provision which limits the capitalization of the consolidate corporation to the value of the combined properties, by enabling the commission to arrive at a value for this purpose either by utilizing the results of the valuation under section 19a or otherwise.[25]

The object of the Commission's recommendations is to facilitate the making of consolidations in the public interest. That is why the Commission requests that it be relieved of the impractical requirement that it draw up a complete plan, that consolidations in any form be permitted at the discretion of the Commission, and that it be permitted to arrive at valuations for consolidation more expeditiously than is possible under section 19a. The most significant recommendation in its bearing on the weak road problem is that which specifically authorizes the Commission to disapprove consolidations or unifications which fail to include carriers which the Commission believes ought to be included. Such a provision, the Commission thinks, while it will not force consolidation of weak with strong carriers, will enable the Commission to require attention to be directed to this particular phase of the matter, which otherwise might be neglected.

The need for amendments to the consolidation provisions along the lines of those suggested by the commission has

[25] *Hearings on H. R. 11212*, 69th Congress, 1st session, p. 132.

been developed in hearings before the Senate and House Committees. Those appearing for the short lines have been especially desirous that the law embrace a definite expression of policy with regard to the short and the weak lines. They believe that to give the Commission power to approve consolidations which are "in the public interest," and to disapprove those which are not, is not sufficiently specific. They suggest that the consolidation provisions contain a statement of the purpose of the Act to provide adequate and efficient railroad transportation and a requirement that necessary weak and short lines be preserved and stabilized.[26]

The National Industrial Traffic League, on the other hand, has gone on record as opposed to a declaration of policy which will require the Commission to do something affirmatively to take care of the weak lines. The principal interest of that organization with regard to consolidation is the maintenance of competition between carriers. It does not favor a saddling of weak carriers on strong ones that may result in increased cost of transportation for vast numbers of shippers, since the strong roads carry a large proportion of the total traffic.[27]

On December 5, 1927, Representative James S. Parker introduced into the House of Representatives a bill to amend the consolidation provisions of the Act of 1920. The bill was referred to the Committee on Interstate and Foreign Commerce, and after hearing was revised and re-introduced into the House on April 2, 1928. Although nothing came of the measure its importance lies in the fact that it was one more expression of a general interest in consolidation legislation. The Parker bill[28] included provisions following the recommendations of the Interstate Commerce Commission

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[26] Cf. Statement of Ben B. Cain, *Hearings on S 1175*, 70th Congress, 1st session, p. 207.

[27] Cf. Statement of R. C. Fulbright, *Hearings on H. R. 5641*, 70th Congress, 1st session, p. 208.

[28] *H. R. 12620*, 70th Congress, 1st session.

and many other provisions that have been suggested in the various hearings on consolidation held during the last three or four years.

The Parker Bill provided for voluntary consolidation but proposed a much wider latitude in the methods by which consolidations might take place. It made no mention of a pre-arranged plan, and gave more specific powers to the Commission in dealing with short and weak lines. Paragraph 1 of section 202 provided:

> The unification of carriers or of property of carriers, through any method or procedure provided for in this title, is hereby authorized in any case in which, in the opinion of the Commission, such unification will promote the public interest. In determining the public interest the Commission shall give due consideration to the maintenance of competition between carriers and the prevention of any undue lessening of existing competition, the preservation and improvement of the service afforded by the necessary weak or short lines, the promotion of economy, the affording of better service, the securing of a simplified and more effective regulation of carriers, the ultimate establishment of a number of strong and efficient systems well balanced within themselves and with other systems, and to such other factors as may be in the public interest.

Section 203 provided that unification might take place by "corporate consolidation," by "corporate merger," or by the acquisition by one carrier of the right to operate all or a part of the properties of another carrier by purchase, sale, exchange, lease, or otherwise. The bill gave to weak carriers the right to intervene to protect their interests, and provided, for the protection of strong carriers, that if the Commission should impose as a "condition to the approval" of a proposed unification that a carrier not joining in filing the petition be made a party to the proposed unification, the petitioning carriers might report the efforts made by them

to comply with the condition; and if, after hearing, the Commission should be of the opinion that the carrier which is to be made a party is demanding unreasonable terms, the Commission "may revoke or modify the condition or, if requested to do so by such carrier, may prescribe the terms on which the carrier be made a party to the proposed unification." The object of this provision was to protect strong carriers from exorbitant demands of weak lines and to permit the Commission to include in proposed unifications railroads which it believed should be included in the public interest. Ample protection for the weak carriers was further assured by the requirement, in paragraph 3 of section 207, that

> The carriers and the Commission shall give due consideration to the inclusion in the plan of short and weak carriers in the territory involved.

It is unfortunate that the consolidation provisions of the Interstate Commerce Act were not amended in the past session of Congress in some such fashion as that proposed in the Parker Bill. The general purposes of the bill were to remove the defects in the present law which have operated to prevent the consummation of consolidations. Whatever the differences in opinion may be as to details there is substantial agreement among the interested parties that consolidation is a sound policy, and that the consolidations brought about should preserve necessitous weak carriers. Consolidation does not offer a complete solution of the weak road problem, however. With sentiment as it is, and probably under the Constitution, consolidations will have to be voluntarily entered into, and under voluntary consolidation some weak roads will not be taken over by strong roads. Moreover, the advisability of saving all weak carriers by attaching them to stronger systems is at best questionable. It would be a mistaken policy to force systems like the Pennsylvania, the New York Central, the Baltimore and Ohio, the Santa Fe, and others to adopt short and weak lines

to the extent that the service of those systems should suffer substantially. But consolidation in many cases would be of immense importance to weak lines and to the shippers who use them, and there seems to be little doubt that with proper modification of the consolidation provisions of the present law many consolidations of strong and weak lines might ultimately be effected. It is a problem for individual railroads to decide under the supervision and guidance of the Commission. Consolidations cannot be forced. The consolidation of all the railroads of the United States into a limited number of systems can take place only as the result of a gradual process of growth and development, similar to the consolidation movement before 1920.

CHAPTER VI

THE PROBLEM, ONE OF INDIVIDUAL RAILROADS

No more convincing observation with regard to the weak road problem can be made than that it is not one problem, but many problems. In the preceding chapter it was shown that consolidations between railroads take place on an individual basis, and that strong roads take over weak roads only when the transaction is financially and commercially justifiable. Moreover, a strong road in contemplating consolidation with a weaker carrier is concerned not only with its present status but with its future possibilities. Changes in railroad traffic which are not so significant to large systems on which the traffic is diversified, are of vital importance to short and weak lines, many of which are dependant upon a single source of traffic for a large part of their operating revenues.

It is a fact of far-reaching importance that the traffic of the railways of the United States has largely been revolutionized within recent years. That railroads have lost a considerable part of their passenger business is a well-known fact. However, extraordinary changes have taken place in the freight originated on the railroads due to changes in tastes, habits and modes of living of the American people. Taking the tonnage for all commodities originated, grouped, as far as practicable, in accordance with the classifications first made by the Interstate Commerce Commission, the figures show that in the 14 years ending with 1913 there were increases in the tonnage shipped by rail of all these groups of commodities. In the 14 years ending with 1927, however, there were increases in only 18 of these groups, and decreases in 17.

Among the most significant increases in traffic have been those due to the development of the automobile industry. To this development is largely due the greatest relative increase in tonnage during the last 14 years—that of 398 per cent in petroleum and oils. It has been largely responsible further for the 83 per cent increase in the tonnage of stone, sand, and other like articles during the same period. In the seven years ending with 1927, petroleum and other oils increased 75.3 per cent; sand, stone, etc., 64 per cent; and cement, brick, and lime, 47 per cent.

There have also been significant decreases in certain classes of tonnage during the last 14 years. Diminishing uses of horses have resulted in a reduction of 35 per cent in shipments of hay. The tonnage of household goods and furniture originated has declined 38 per cent, due to changes in habits of living as well as to the development of the use of motor trucks. A decline of 81 per cent in the tonnage of wines, liquors, and beers originated and of 55 per cent in coke tonnage, are other significant changes in railroad traffic.

It is difficult to explain many of these changes, but their significance to individual roads is readily apparent. During the last 14 years the tonnage of manufactured commodities increased almost four times as much in proportion as that of farm products, almost twice as much in proportion as that of products of mines, and more than six times as much in proportion as that of products of forests. Also, there has been a marked tendency towards increased consumption of luxuries by the American people.[1] As a consequence, railroads which carry a large percentage of manufactured commodities have experienced a greater measure of prosperity than those which are dependent upon earnings from the transportation of farm products for a large proportion of their revenues.

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[1] Cf. "Significant Changes in Railroad Freight Traffic," editorial, *Railway Age*, 85: 76-98, July 21, 1928.

Changes in railroad traffic due to variations in demand for the commodities transported are usually long-run developments that are difficult to anticipate. Often they do not create insuperable difficulties for large systems with huge resources. Such systems by developing their territories, and by inducing new industries to locate on their lines, make up losses in one branch of traffic by development in others; not so the short and the weak lines. These lines suffer handicaps in attempting to develop their territories in competition with larger, stronger systems. The greater part of the railroad mileage abandoned since 1920, has been mileage on which the earnings have been reduced below the level of sustenance due to the decline of the major source of traffic and the inability of the management to make up such losses by developing other sources of revenue.

It was contended, in 1920, that a portion of the weak mileage would have to be abandoned in the public interest, that it would be mistaken policy to attempt to continue the operation of railroad mileage which had demonstrated its incapacity to maintain itself, and which offered no possibility of future development. Congress felt the necessity of dealing with such mileage on an individual basis in order that adequate transportation service might be provided without unduly increasing the cost of the service to shippers. Accordingly, it gave to the Interstate Commerce Commission the power to issue or to refuse to issue certificates of public convenience and necessity, authorizing a railroad to abandon all or any portion of its line, and it was provided that no abandonments should be permitted except by approval of the Commission. Under this authority, up to 1929, the Commission has authorized the abandonment of about 5,804 miles of railroad. Practically all the certificates issued were for small lines, although two lines of considerable length were abandoned—the Chicago, Peoria, and St. Louis, 224 miles long, and the Kansas City Northwestern, 163 miles long.

In the administration of paragraphs 18 to 20, inclusive, of section 1, which grant the Commission control over abandonments, the Commission is faced with many difficult problems. On the one hand, there is a whole railroad or a piece of line which cannot maintain itself in independent operation; on the other, the needs of the shippers dependent upon such lines for transportation service. It has been argued frequently before the Commission that it should consider only the question of whether there is a public need for the service and to hold that the question of loss in operation should have no bearing upon the continuance or discontinuance of the service, and that the question of gain or loss is a matter entirely unrelated to public convenience and necessity. The Commission has held that

> Such a construction, however, loses sight of the familiar doctrine of the courts that the very fact that a line of railroad does not pay the expense of running its trains is cogent evidence that public convenience and necessity does not require it to be kept in operation. . . . . A further persuasive consideration against this contention is found in the result of its adoption on the validity of the act itself. For while we may not with propriety decide that an act of Congress is unconstitutional, we must as clearly avoid any suggested construction of a statute which would render it ineffectual and adopt a construction, when called upon to construe it, which will sustain it, if such a construction is reasonable and consonant with the language employed. . . . . The past earnings and probable future earnings are evidentiary facts which, in the light of all circumstances disclosed of record, enable us to make a finding under which the appropriate certificate may be granted. We are not impressed with the argument that it is merely our duty to make a finding with respect to a bare need for the service unaffected by how far that need is

evidenced by the payment forthcoming for the service rendered.[2]

It is obvious that in any case of abandonment some people are inconvenienced, and in some cases deprived of transportation service, but where the earnings of railroad mileage are not sufficient to sustain it, the problem becomes one of weighing the benefits received from a service over against the cost of furnishing it. The Commission repeatedly has held that while certain patrons of a line may be inconvenienced, and in some instances put to added expense, where such contingencies can not be avoided except at a disproportionate cost to the carrier the line must be abandoned in the public interest.[3] In such cases continued operation would cause losses to the carrier wholly disproportionate to any service rendered the public.[4] The Commission has also held that although a carrier's business must be considered as an entirety, and the company cannot claim the right to earn a net profit from every section into which its road might be divided,[5] a railroad should not be required to continue indefinitely the operation of a branch line which will not pay the cost of operation, maintenance, and taxes, on the theory that its system as a whole is operated at a profit.[6] Especially should abandonment be permitted in cases in which expenditures necessary to put the roadbed and equipment in safe operating condition would not be justified.[7]

Abandonment of railroad mileage raises the difficult problem of providing transportation for the communities served. In cases in which the communities and industries have alternate rail routes which they may use, even though

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[2] *Public-convenience Certificate to D. & N. M. Ry.*, 71 I. C. C. 795, 799-800.
[3] *Abandonment of Branches of B. & M.*, 105 I. C. C. 13, 70.
[4] *Abandonment of Line by C., R. I. & P.*, 94 I. C. C. 717.
[5] *Abandonment of Branch by Pere Marquette*, 72 I. C. C. 303.
[6] *Abandonment of Branch Line by S. P. Co.*, 72 I. C. C. 404.
[7] *Abandonment by P. R. R. Co.*, 117 I. C. C. 139.

they be less direct, the problem is a relatively simple one. But where the shippers would have to depend on other means of transportation the adequacy of such means to furnish the necessary service must be taken into consideration. The Commission has ruled, and wisely, that the mere desire to have a railroad is not sufficient reason for the continuance in operation of lamentably weak mileage, but that there must exist the will to co-operate in its operation and the ability to support it adequately.[8] The patrons must co-operate by accepting such reasonable economies in service as may be feasible, and in cases in which they represent themselves to be dependent upon the service performed by a railroad cannot reasonably expect to have that service continued when they resort to other means of transportation, where no necessity exists, and expect or demand special requests or inducements to use the railroad.[9]

The recent growth and development of the automobile giant have led the unwary to assume that railroad mileage can readily be abandoned without depriving industries and communities of transportation service. Motor buses and motor trucks, they say, can furnish a better and a cheaper service than weak railroads and it is mistaken public policy to perpetuate roads that have outlived their usefulness, thus increasing unnecessarily the transportation burdens of the whole country. In individual cases the contention is unquestionably well founded, but it is unfortunately not so in all cases. That motor buses and trucks can furnish certain transportation services at a lower cost than the railroads is evidenced by the rapid growth of those agencies and the extent to which they have taken traffic from the railroads, but the relative efficiency is more apparent in passenger than in freight traffic.

On December 31, 1927, there were in the United States 85,636 motor buses, operating 635,609 miles of bus route.

[8] *Abandonment of Branch by Pere Marquette*, 72 I. C. C. 267.
[9] *Abandonment of W. & M. Ry.*, 131 I. C. C. 145.

These buses had carried 2,525,000,000 passengers during the year 1927, and much of their business had been taken from railroads. The extent to which motor bus transportation of passengers has replaced steam transportation was disclosed in an exhaustive investigation of the growth of motor transportation conducted by the Interstate Commerce Commission. The Commission found that from 1920 to 1926 the number of passengers carried per annum by class I carriers had declined 31.13 per cent, and passenger revenues 19.03 per cent per annum. Practically the only reason assigned for the loss of passenger traffic was the development of the private automobile and the motor bus.[10] Of further significance to the communities served by weak railroads, it was found that the development of motor bus traffic has taken place largely in the short-haul field, although there is a tendency at present for bus companies to engage in long-distance passenger transportation, even to the extent of building "sleeper" coaches. The decline in railroad passenger traffic has been altogether in local traffic, long-distance traffic having increased. From 1921 to 1926 sleeping- and parlor-car traffic of the railroads of the United States increased 27 per cent, while the number of coach passengers declined 26 per cent. In 1921 the railroads handled 31 per cent of their passenger business in parlor and sleeping cars, but in 1926 about 44 per cent, the change being due to a relatively greater number of long-distance travelers using Pullman coaches. Finally, the motor coach has been most used outside of metropolitan areas where steam transportation remains the chief reliance of the commuter. From 1922 to 1926, while the local passenger traffic of railroads was declining, commutation passenger miles increased 8 per cent.[11]

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[10] *I. C. C. Docket No. 18300,* Appendix E.

[11] *Automotive Transportation and the Railroads,* A Report by the Commission on Commerce and Marine of the American Bankers Association, 1927, pp. 23-24.

The facility with which motor buses have taken away railroad passenger traffic has not been due alone, not even largely, to lower fares. The Commission's investigation showed that for short hauls, in most instances, bus fares were about the same as, or even higher than, rail fares for transportation between the same points. Buses offer greater frequency and flexibility of service, frequent pick-up and discharge, and transportation through the heart of cities and villages. In territories of light traffic they have been able to furnish a better service at lower cost than railroads are capable of on branch lines or short lines. The superior advantages of buses for passenger transportation in such territories have been fully appreciated by many railroad companies. At the end of 1927, sixty-seven railroads directly or through subsidiaries were operating 994 buses over 10,519 miles of bus route to replace branch line trains or to supplement rail-line or terminal service.[12] The direct expenses, such as wages and fuel, of operating a local passenger train have been variously estimated to be within the neighborhood of $1.25 per passenger train mile, while the cost of operating a motor bus has been estimated to range from 25 to 30 cents per bus mile. In many cases one motor coach will handle the passengers, luggage, mail and express of a lightly patronized train, but if 3 or 4 coaches were required the saving would still be important, and the revenues would no doubt be greater because those buses with frequent service would attract more business.

The development of motor bus transportation and its inherent strength have demonstrated beyond dispute that passenger service can be readily supplied by motor buses to communities which before the development of motor transportation were dependent alone upon railroads. In fact, a better and cheaper service can be provided. Many of the difficulties of short and branch lines have been created by

[12] *Bus Facts for 1928*, Motor Bus Division, American Automobile Association, Washington, D. C., p. 7.

motor bus competition. That this is true is evidenced by the fact that short lines are beginning to substitute motor buses for rail service. Recently two short lines—the Wadley Southern and the Louisville and Wadley, both located in Georgia—have organized the Short Lines Motor Transport Company and are operating motor coaches over two routes instead of passenger trains. Many instances of the substitution of motor buses for branch line trains could be cited, but the cases of the New Haven and the Boston and Maine are typical. On January 1, 1928, the New Haven through a subsidiary, the New England Transportation Company, was operating 240 buses over 1,874.6 miles of route, one-half of the routes having replaced local passenger service on unprofitable branch lines. The Boston and Maine, which has a large mileage of branch lines forming a network of railroads between main lines in sparsely settled sections of northern New England, has substituted bus service for rail service over many of these routes through a subsidiary, the Boston and Maine Transportation Company, at a considerable saving in cost of operation. This company estimates that it can operate 5 motor buses for the cost of operating a steam passenger train.[13]

However, providing bus transportation for communities which have been deprived of rail transportation by abandonment does not go very far towards establishing adequate transportation for them. The real problem is concerned with the transportation of freight. Here again motor transportation has demonstrated great capacity in certain types of traffic. The investigation made by the Interstate Commerce Commission showed that motor trucks since 1920 have become serious competitors of railroads for short-haul freight especially of the type that is usually shipped in less-than-carload lots over the railroads. From 1920 to 1926 the tons of less-than-carload freight per annum handled by

[13] *Bus Facts for 1928*, p. 14.

class I railroads declined 24.03 per cent, while the number of carloads per annum increased 10.28 per cent, the decline in less-than-carload freight being attributed to the competition of motor trucks. Motor trucks have been able to offer a saving in time, better and more dependable service, and equipment specially designed for certain types of transportation. They have developed extensively the transportation of household furniture and of livestock, and have taken over the bulk of shipments of milk formerly handled by electric railways and wagons, and much of the short-haul milk traffic of steam railways.

The ability of motor trucks to handle short-haul less-than-carload freight is well demonstrated. However, very little carload tonnage is handled by trucks, and there is a tendency for the proportion of motor truck tonnage, of the type usually shipped in less-than-carload lots over railroads, to decrease with increase in distance as compared with railroad tonnage. An analysis of railroad and motor truck tonnage for an average month in 1925 from Columbus, Ohio, to 30 cities in Ohio, 7 to 134 highway miles away, showed that for distances less than 20 miles, motor trucks carried 84.5 per cent of the total tonnage; for distances from 20 to 39 miles, 54.7 per cent; from 40 to 59 miles, 32 per cent; from 60 to 99 miles, 24.2 per cent; and for distances of 100 miles and over, 2.3 per cent.[14] Furthermore, the major part of motor truck tonnage consists of commodities distributed to ultimate consumers, products of manufacture constituting the chief volume.

The transportation of commodities in bulk by motor trucks is subject to economic limitations. In 1926, the average revenue freight train load for the railroads of the United States was 772 tons. To haul this load by motor trucks it would require 154 trucks of 5-ton capacity, fully loaded, and at least 154 truck drivers. With a freight train crew

[14] *I. C. C. Docket No. 18300*, p. 19.

of 5 or 6 men there would be transported 128 to 154 tons per man; for each truck driver, 5 tons. The fuel cost of the train, consuming 300 pounds per train mile at a cost of $4 per ton, would be 60 cents per train mile. The fuel cost for the trucks necessary to transport the same load, consuming 40 gallons of gasoline per mile at 18 cents a gallon would be $7.20 per mile.[15]

The conclusion to be drawn from a comparison of motor with rail transportation is that although communities in which railroad mileage is abandoned need have no fears with regard to passenger transportation, nor with regard to the transportation of less-than-carload freight for short distances, they cannot expect from motor trucks a service similar to the carload service of railroads at rates which even approximate carload rates. Consequently, not many miles of railroad can be abandoned without sacrificing the industries dependent upon them for transportation, since no industry paying truck rates can compete in a common market with industries paying carload rates.

The Interstate Commerce Commission has consistently recognized the disparity existing between the costs of truck and rail transportation of carload freight, and has again and again denied applications for authority to abandon branch lines on the ground that the proposed abandonments would result in additional trucking costs, which would have a disastrous effect upon the industries served. Such applications have been denied not only in cases in which the proposed abandonment would necessitate the use of motor transportation over highways unfit for heavy traffic,[16] but in cases in which the railroad has been paralleled by a good state highway.[17] The Commission has also been impressed with the fact that freight transportation on the highways is in a developmental stage, and that it is highly desirable to main-

[15] *Automotive Transportation and the Railroads, supra,* p. 15.
[16] *Abandonment of Branches by B. & M.,* 105 I. C. C. 13.
[17] *Abandonment by B. & M. R. R.,* 117 I. C. C. 679.

tain present transportation facilities intact until other satisfactory means of transportation are assured.

Abandonment, accordingly, is not the remedy for any considerable proportion of weak mileage. A study of the problems which the Commission faces in providing transportation facilities for all sections of the country forces the conclusion that practically all of the railroad mileage of the United States will have to be preserved, and that only in individual cases may mileage be abandoned without sacrificing important industries and communities. Railroads are, and may be expected to remain, the "backbone" of the transportation system. This is true not only in the sections of heaviest traffic, but in those of light traffic. How to maintain the railroads in territories which do not contribute sufficient traffic to sustain them is the problem.

In previous chapters we have discussed the relationship of recapture and consolidation to the problem and have attempted to show that the weak railroads must be dealt with individually. The Transportation Act of 1920 provides machinery which was designed to help weak roads directly through divisions of joint rates in the interests of the weaker of the connecting carriers. Since 1910 the Interstate Commerce Commission has had more or less effective control of the divisions of joint rates as between carriers, but the Act of 1920 inaugurated a new policy with regard to such divisions. The new powers of the Commission in this particular aspect of regulation are found in paragraph 6 of section 15 of the act to regulate interstate commerce. This section, after authorizing the Commission to determine what might be "just, reasonable and equitable" divisions of joint rates, either upon full complaint or upon its own initiative, further provides that:

> In so prescribing and determining the divisions of joint rates, fares, and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned

> are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

In its annual report for 1921, the Commission made the prediction that it would soon be called upon to exercise to full extent the powers with respect to joint rates conferred upon it by Congress, and that the provisions of the statute would "afford scope for much difference of opinion as to the intent of the Congress regarding the extent of these powers and the manner in which they should be used in the public interest."[18] That prediction was soon to be fulfilled in an important case concerning divisions between the New England and the eastern trunk line carriers. In this case the New England carriers alleged that divisions accruing to them out of the joint freight rates increased pursuant to *Ex Parte 74* were, among other things, in violation of paragraph 6, section 15, of the Interstate Commerce Act. They alleged that the divisions were inadequate, as a whole, even when tested by the mileage standard. More importantly, however, they urged that "the amount of service rendered by the several carriers participating in a joint rate is no longer controlling," that "mileage is no longer the yardstick by which divisions are to be measured," and that paragraph 6, section 15, is "revolutionary" in that "it subordinates the mileage haul and stresses certain other specified considerations which have no relation thereto."[19] The

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[18] *Thirty-fifth Annual Report of the I. C. C.*, 1921, p. 43.
[19] *New England Divisions*, 62 I. C. C. 513, 517.

"specified considerations" which the complainants had in mind included the mandate of Congress to the Commission to take into consideration in making divisions the revenue needs of weak carriers, and their importance to the transportation system as a whole.

It was urged for the defendants that the New England carriers were not in reality asking for "just, reasonable, and equitable" divisions, but that they were seeking the transfer to them of fixed amounts, "arbitrarily" deducted from the revenues of the carriers in eastern trunk line and central territories because of the failure of the New England carriers to receive from the joint rates established a return upon the value of their property as large, relatively, as the return received in the aggregate by the carriers in Eastern Trunk Line and Central territories.[20]

The peculiar local transportation difficulties encountered by the New England lines have long been a matter of study by the Commission. In a decision increasing rates in New England in 1918 the Commission discussed fully those difficulties.[21] The New England lines serve directly almost none of the territory outside of New England, and they must depend for a considerable amount of their tonnage upon interchange with rail lines to the north and west of New England, and upon water lines to the seaports, hence they have come to be called "terminal or switching lines." The freight traffic which originates in New England consists of a larger proportion of high-grade manufactured products than that of any other section of the country, due to the fact that New England is a highly industrialized section, dependent for its industrial life upon the importation of raw materials and the conversion of them into manufactured products. As a consequence, there is a heavy movement of empty cars from New England to the west. It is estimated that for every three carloads of manufactured products

[20] *New England Divisions, supra,* p. 515.
[21] *Re Proposed Increases in New England,* 49 I. C. C. 421, 423-4.

moving westward New England receives five carloads of raw materials. Other peculiarities in the transportation situation in New England are the high proportion of less-than-carload tonnage as compared with carload tonnage, a large proportion of total operating revenues received from passenger traffic by the carriers in southern New England, and the substantial volume of traffic moving by water from and to New England owing to the concentration of a large part of the population along the coast.

The deficiency of income of the New England carriers was so great in 1920 that (even before the increase in wages ordered by the Railroad Labor Board) it was estimated that an increase of 47.40 per cent in freight rates would be necessary to secure them a fair return. A like estimate for the carriers in the Eastern Trunk Line and Central Freight Association territories necessitated increases of 29.76 per cent and 24.31 per cent, respectively.[22] It was recognized by the Commission, however, that the conditions could not be remedied altogether by increases in local rates, since unduly large increases in rates local in New England would doubtless provoke more serious competition by motor truck and water carriers. The advisability of making a separate group of the New England carriers was taken under consideration, but the Commission included them with the other subdivisions of Official Classification territory in the eastern group, and ordered the freight rates to be raised 40 per cent in that group. That this increase would not meet the needs of the New England carriers, however, the Commission was fully aware. In its conclusions as to general increases in *Ex Parte 74*, the Commission said:

> While the New England carriers are included in the eastern group and are subject to the percentage for that group, the evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration

[22] *Increased Rates*, 1920, I. C. C. 220, 247.

to the divisions of joint rates accruing to these lines.

In the first hearing of the New England Division's case, the Commission refused to grant a blanket increase in divisions solely on the ground that other carriers in the same rate-making group had "not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service" as the New England carriers. Nevertheless, it was held that "this is one factor which may be taken into consideration."[23] Upon a rehearing of the case the desired increase in divisions was granted, the Commission following a broad interpretation of the powers entrusted to it by Congress for the maintenance of an adequate transportation system. The Commission held:

> It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. . . . .
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> We are of the opinion that our power over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier.[24]

The order of the Commission in the New England Division's case was contested by the defendant carriers in the Supreme Court of the United States. The carriers con-

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[23] *New England Divisions, supra,* p. 561.
[24] *New England Divisions,* 66 I. C. C. 196, 199.

tended that Congress did not authorize the Commission to prescribe divisions to relieve the financial needs of certain lines, and that authorizing the apportionment of a joint rate on the basis of the greater needs of a particular carrier is unconstitutional. The court held, however, that the Transportation Act of 1920 had "introduced into Federal legislation a new railroad policy," a policy which had sought to insure an adequate transportation service, and it was expressed by Congress "in unequivocal language." For the accomplishment of the purposes of the Act Congress had established "new rights, new obligations, new machinery." In carrying out those purposes the Commission was obligated, in so far as divisions are concerned to consider "the importance to the public of the transportation services" of the New England carriers and their revenue needs. Furthermore, the court held that the argument of the carriers that the rate must be divided on the basis of the services rendered by the several carriers, and that apportionment according to needs is a taking of property without due process, begs the question. The question before the Commission is the determination of a just division, cost of service being only one of the elements to be considered. A just division may involve a smaller proportion of an increased rate to the prosperous carrier than the division of the original rate. The just share of a carrier participating in a joint rate "is to be determined not by an agreement of the parties or by mileage." Such a share "is to be fixed by the Commission—fixed at what that board finds to be just, reasonable, and equitable."[25] The increase in divisions granted the New England carriers by the Commission was upheld, and the principle was established that the revenue needs of weak carriers is one of the elements which may be taken into consideration in determining divisions of joint rates.

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[25] *New England Divisions Cases*, 261 U. S. 184, 189-196.

The principles upheld in the New England Divisions case have been the occasion for many complaints brought before the Commission. Weak carriers, often those operating at a deficit, have been quick to seize upon increased divisions as a means of building up revenues and have importuned the Commission to grant such increases because of their revenue needs. The Commission has thus been faced with the necessity of adopting and adhering to a definite policy with regard to divisions of joint rates, the policy of making divisions after a consideration of all the factors which might enter into such a case, and of not attaching undue importance to any single factor. Those factors, as found in paragraph 6, section 15, of the Interstate Commerce Act, and as enumerated by the Commission in *Wichita Northwestern Ry. Co.* v. *C., R. I. & P. Ry. Co.,* are:

> 1. The efficiency with which the carriers concerned are operated.
> 2. The amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property.
> 3. The importance to the public of the transportation service of such carriers.
> 4. Whether any particular carrier is an originating, intermediate, or delivering line.
> 5. Any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.[26]

Although the Commission has given weight to the revenue needs of weak carriers, it has consistently refused to let that be the single controlling factor in the determination of divisions with their strong connections. In the case of *Federal Valley R. R. Co.* v. *T. & O. C. Ry. Co.*,[27] there was under consideration the divisions of the Federal Valley which was

[26] *Wichita Northwestern Ry. Co.* v. *C., R. I. & P. Ry. Co.*, 81 I. C. C. 513, 517.

[27] *Federal Valley R. R. Co.* v. *T. & O. C. Ry. Co.*, 68 I. C. C. 499.

being operated at a deficit. The record revealed that the road was efficiently and economically operated, that its transportation service was necessary to the public it served, that the greater portion of its revenue was derived from traffic interchanged with its connections, and that it must consequently rely largely upon increased divisions to continue in operation. The Commission refused increases on the ground that the record was not sufficient to show the comparative costs of service as well as other necessary facts. It was held that the fact that the Federal Valley was operating at a deficit did not "of itself" entitle it to increased divisions. And again, in *Artemus-Jellico R. R. Co.* v. *L. & N. R. R. Co.*, where the fact that the complaining carrier was not earning a fair return was involved, the Commission held that this fact "does not necessarily entitle it to an increase in divisions that will produce such return."[28]

However, both the Supreme Court and the Commission have held that the financial needs of a weaker road may be considered in increasing its divisions, provided there is enough left to its connections to avoid confiscation. In the New England Divisions case there was under consideration the revenue needs of a group of carriers, but the principles are the same when applied to the relations of one carrier to connecting carriers. In the so-called Orient Divisions case, the Supreme Court held:

> It is settled that in determining what the divisions should be, the Commission may, in the public interest, take into consideration the financial needs of a weaker road; and that it may be given a division larger than justice merely as between the parties would suggest "in order to maintain it in effective operation as part of an adequate transportation system" provided the share left to its connections is "adequate to avoid a confiscatory result."[29]

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[28] *Artemus-Jellico R. R. Co.* v. *L. & N. R. R. Co.*, 123 I. C. C., 182, 188.
[29] *U. S.* v. *Abilene & So. Ry. Co.*, 265 U. S. 274, 284.

In *Minnesota Western R. R.* v. *A., T. & S. F. Ry. Co.*, the Commission granted an increase in divisions to the complaining carrier, based "principally" upon its weak financial condition and inability under present divisions to earn sufficient revenue to pay cost of operation, taxes, and a fair return on the investment. The record showed that the carrier was efficiently and economically operated and that it was necessary to the public. Its earnings, however, were inadequate to continue operation, and due to motor truck competition and the competition of other railroads a further increase in local rates would kill its local traffic. In such circumstances about the only source of help for the weak carrier was an increase in divisions. This the Commission granted, with the justification that

> When other methods of increasing earnings or reducing operating costs have been examined without discovering the necessary relief for a weak road it becomes necessary to consider preventing needed revenue from passing to more prosperous connections.[30]

Increasing the divisions which weak carriers receive from joint rates is one way by which such carriers may be helped. It provides a method of equalizing earnings between strong and weak roads, at least so far as that can be effected from the joint traffic, much more direct than that provided in the recapture clauses. Divisions operate before the payments made by shippers get into the coffers of connecting carriers. The equalization principle involved is clearly evidenced in the language of the Commission in various decisions. In the Minnesota Western Railroad case the defendants contended that the relative need of revenue should not influence the Commission in increasing the complainant's divisions for the reason that several of the defendant roads were in the hands of receivers. A similar contention was made in

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[30] *Minnesota Western R. R.* v. *A., T. & S. F. Ry. Co.*, 109 I. C. C. 127, 131.

the case of the Wichita Northwestern Railway. In both cases, however, the showing of the complainant roads was far less favorable than that of the defendant roads. The Commission, therefore, taking into consideration the relative cost of the service, the fact that the complainant roads were wholly originating and delivering carriers, the amounts of revenue required to pay the respective operating expenses, taxes, and a fair return, and the importance to the public of the transportation services of the complainant as well as of the defendant carriers, increased the divisions of the complainants.

It does not follow, however, that the Commission must give ear to every plea of weak carriers for increased divisions, nor does it follow that the Commission is under obligation to sustain all weak carriers through divisions. In *Fort Smith, S. & R. R. Co.* v. *A. & V. Ry. Co.*, it was found that the net revenues of the carrier were insufficient to meet all expenses and the interest on its obligations, although the showing was such that there could be no possible ground for the abandonment of the line. Nevertheless, the Commission held that it was not called upon to approve any and every method advanced by carriers to increase their revenues, and refused an increase in divisions.[31]

It has been contended on behalf of the short and the weak railroads that divisions of joint rates are only of limited assistance to weak carriers. In the first place, the Commission does not know what it needs to know about divisions of joint rates. Divisions are not generally filed with the Commission, and investigation is made usually after complaint. The weak carriers are hesitant about bringing complaints against strong connections before the Commission because they receive many favors from the stronger lines which might be denied them after a contest. Furthermore, increased divisions to a weak line which is part of a

[31] *Fort Smith, S. & R. I. R. R. Co.* v. *A. & V. Ry. Co.*, 102 I. C. C., 708, 711-12.

route that competes with other routes may be of doubtful service to the weak carrier since it might result in the stronger line sending freight over connections where its own divisions are more favorable. In the second place, the effectiveness of the control of divisions by the Commission is predicated upon the effectiveness of the Commission's control over through routes. Section 15 of the Interstate Commerce Act gives the Commission the authority to establish through routes but with the limitation, in paragraph 4, that a carrier may not be required, without its consent, to short-haul itself. Such limitation, it is contended, renders ineffective the Commission's power over through routes from the standpoint of helping the short lines, since many of those lines, where they are, or might be, connecting carriers, operate between points that are already served by the lines of the larger systems.[32]

The above contentions are well-founded. They arise out of conditions which demonstrate clearly that the weak roads may not look to divisions alone as the solution of their problems. Representatives of the strong carriers contend, moreover, that it would be bad policy for the Commission to take from the strong to support the weak, in this direct manner, in that many roads now strong might be brought to the brink of ruin. Without a doubt the administration of the provisions with regard to divisions requires the exercise of sound judgment on the part of the Commission. It is essentially an administrative problem. But that divisions of joint rates have been, and can be, made in the interests of weak carriers is of immense significance to those interested in maintaining an adequate transportation system. In this way weak roads may be sustained which it would be difficult to help otherwise. Division of joint rates is, however, just an additional device for dealing with weak roads as individuals.

[32] Cf. Statement of Ben B. Cain, *Hearings on H. R. 11212*, 69th Congress, 1st session, p. 334.

In view of the practical limitations to the relief which can be given a short or weak line through adjustment of divisions the Commission has in many cases attempted to give direct assistance to short lines and weak lines by permitting them to add differentials to rates determined for standard lines by the application of distance scales. In the recent Southern Class Rate Investigation it was provided that maximum reasonable class rates for interstate application between points on any of a number of weak lines and short lines which the Commission had singled out for special treatment should be determined by the application of the standard distance scale plus arbitraries. With regard to joint rates between points on weak lines or short lines and points on standard lines it was also provided that such weak or short lines should be permitted to employ arbitraries for that part of the joint haul which is over the short or weak line. The Commission further expressed the view, although divisions of joint rates were not under consideration in that proceeding, that the divisions of the standard lines should not be greater than they would receive if they were dividing the same rates minus the arbitraries with other standard lines and that the weak or short lines should receive all the benefit accruing from the application of the arbitraries.[33]

Similar provision for weak lines and short lines has been made by the Commission in the Southwestern Territory. In the southwest there are a number of short independent lines and a number of lines of some length which also are independent of the principal trunk lines and are in comparatively poor financial condition because of light density of traffic. The difference in traffic density in certain sections of the southwest has long been taken into account by the creation of differential territories in Texas and Oklahoma, in which carriers add differentials to rates for similar distances in common point territory, where the traffic is heavier.

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[33] *Southern Class Rate Investigation*, 100 I. C. C. 513, 653-5.

Moreover, in the recent investigation in the southwest the Commission again singled out a weak line for special treatment, the Fort Smith & Western, which was permitted to add arbitraries to the maximum reasonable class rates for standard lines. It was implied also that other weak or short lines might be entitled to receive individual treatment, but the incomplete character of the record and the need of close investigation prevented the naming of them at the time the decision was handed down.[34]

Unfortunately, the assistance which may be given to weak carriers by permitting them to charge higher rates than standard lines for similar distances is subject to the limitation of what the traffic will bear. Although a carrier is not in competition with other railroads on local traffic, the shippers who use it are in competition with shippers on other lines, and rates which take away markets from shippers deprive railroads of traffic. Moreover, a railroad often is in competition with other transportation agencies. The scale of arbitraries established for weak lines and short lines in the original Southern Class Rate Investigation had to be revised downward later, due to the fact that motor truck or water competition existed between particular points on short lines which made it impossible for them to apply arbitraries that otherwise would have been reasonable.

Like the division of joint rates in the interest of weak carriers, the application of differentials or arbitraries can only be of limited assistance to weak carriers. The difficulties in the way of a wide-spread use of arbitraries demonstrates again the fact that there is no panacea for all the ills of weak railroads. Each road presents a group of problems, often peculiar to its own situation, which find their solution, if at all, in an exercise of judgment by the Interstate Commerce Commission in applying various provisions of the law.

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[34] *Consolidated Southwestern Cases*, 123 I. C. C., 203, 388.

CHAPTER VII

CONCLUSION

The studies made in the preparation of this monograph have convinced the author of the general wisdom of the railroad legislation enacted in 1920, especially those provisions of the law designed to solve the problems of weak railroads. The act was commendable in aim, and was the expression of an unusually clear understanding of the problems which were facing the railroads of the United States in 1920. The law has not been in operation a sufficient length of time for the full fruition of all its principles, and experience has demonstrated that certain parts of the machinery set up not only have failed to function as anticipated, but have operated rather to obstruct the accomplishment of the main purposes of the law. However, the failure of certain provisions to function properly affords little occasion for a criticism of the act as a whole. In the past nine years the Act of 1920 has given ample evidence of the constructiveness of its conception, and successful regulation under it has created a general opinion that the main structure of regulatory machinery set up should not be tampered with unduly.

The establishment and maintenance of an adequate transportation system, which is the great central purpose of the Transportation Act of 1920, must be the objective of a complete and comprehensive policy of railroad regulation. Experience has demonstrated, however, that an adequate system for the whole country does not necessarily include rail transportation for all sections. Where the cost of furnishing rail transportation is disproportionate to the benefits received enlightened public policy does not require the continuance of rail transportation, especially if motor buses and trucks offer an acceptable substitute. A trans-

portation system in order to be able to provide efficiently the necessary transportation service must change with changing conditions. Transportation conditions are always in a state of flux, more so today than ever before. Motor buses and motor trucks have demonstrated their superiority over railroads for the performance of certain services, especially in territories where traffic is light; consequently, an adequate national transportation system may well have as some of its important links motor bus and motor truck routes.

An adequate transportation system, furthermore, must grow with the needs for the service. Before 1920, the yearly increase in railroad mileage was directly due to the need of furnishing transportation for newly developed areas and for increased traffic in older sections, and roughly the growth in railroad mileage kept pace with growing transportation needs. Since 1920 total railroad mileage has remained at about the same figure year after year, new mileage being about equaled by abandoned mileage. This does not imply, however, that the total traffic of the United States has not increased since 1920, nor that no new territories have been opened up since that time. Additional extra track mileage and increased efficiency in handling traffic have increased considerably the ton-mile output of railroad mileage, and the development of motor transportation has opened up new areas and new business, thus obviating the necessity, otherwise, of constructing new railroad mileage.

The importance of motor transportation in the development of new territories was pointed out by the Interstate Commerce Commission in its recent investigation of the development of motor transportation. Of 125,000 population centers or communities of appreciable size in the United States only 80,000 have freight stations on railways. The remaining 45,000, constituting not less than 10 per cent of the entire population, have to rely upon motors for their only form of transportation. The Commission found that

there were 185,000 people living within 75 miles of Indianapolis having no direct rail communication with that city, and that in Indiana there were 600 towns with populations of 50 or more which had no direct rail service, 500 of these being served by motor truck lines, and 280 by regular bus routes. In California 855 towns were relying entirely upon motor transportation.[1]

The facility with which motor buses and trucks develop new areas of traffic is of immense significance to the future problem of providing a transportation system adequate in all its parts. It reduces considerably the element of speculation in the construction of new railroad mileage. For this reason and because of the superiority of motor transportation over rail for certain services the development of motor transportation must be permitted to proceed unhampered by needless regulation. The Commission has recognized the wisdom of such a policy. It has recommended that, although, the interstate transportation of passengers by motor buses should be regulated both in the interests of the railroads and the public, interstate transportation by motor trucks should not be regulated until it shall have reached a stage of development such that suitable regulatory machinery could be devised. The ideal transportation system for the whole country must be a co-ordinated system, one in which rail, motor, and also water carriers have worked out a satisfactory relationship with each other, and in which each carrier has come to perform the transportation service which it is best fitted to perform.

However much the development of motor transportation may prevent the building in the future of short railroad lines and branch lines not capable of sustaining themselves the fact remains that the limitations upon motor trucks for the transportation of freight in bulk enforce reliance chiefly upon railroads for such services. This is true not only in

[1] I. C. C. Docket No. 18300, p. 29.

heavy traffic belts but in territories of relatively light traffic. Consequently, the preservation of necessitous weak rail carriers still remains a fundamental part of the problem of providing adequate transportation, the weak carriers being mostly the six hundred or more short lines scattered throughout the country.

Experience since 1920 has further demonstrated that the problem of preserving weak carriers is really not one problem, but many problems. The varied causes of weakness in railroads do not lend themselves to group treatment. The use of arbitraries for weak lines, and the division of joint rates in the interest of weak carriers are helpful in individual cases, but the difficulties which face the Commission in attempting to apply these provisions on a large scale show clearly that neither can be relied upon for complete protection of the weak carriers. Consequently, there remains the duty of maintaining and reenforcing other provisions of the law designed to maintain such carriers in effective operation. These are the recapture and consolidation provisions.

That the rule of rate-making in section 15a embodies a principle vital to a constructive policy of railroad regulation is generally recognized at the present time. Attacks upon section 15a have not been made upon the rule of rate-making (although the National Industrial Traffic League does suggest the elimination of the requirement that the Commission establish a definite percentage rate of return) they have been leveled at the recapture clauses. Section 15a unquestionably has operated to improve the credit position of the railroads as a whole, and the weak roads have benefited from such general improvement. The railroads as a whole have not in any year earned the 5.75 per cent established by the Commission as a fair return, but a marked improvement in their general condition since 1920 may be observed in many directions. The rate of return upon the investment

accounts of all class I carriers from 1920 to 1927 was as follows:

	Rate of return on investment		Rate of return on investment[2]
1920.....	0.21%	1924.....	4.21%
1921.....	2.83	1925.....	4.74
1922.....	3.56	1926.....	4.98
1923.....	4.30	1927.....	4.40

The above table shows a steady increase in the rate of return from 1920 to 1926, and although the net declined in 1927 from the previous year, due to a decline in traffic, the rate of 4.40 per cent for 1927 was about equal to the average for the five years to 1926.

Improvement in the condition of railroads in general since 1920 is noted, in the second place, in the capacity of railroads to raise huge amounts of capital. The improvement is especially marked by the fact that railroads recently have been able to raise much capital by the sale of stock. For the first eleven months of 1927 the new issues of stock by the railroads, not including conversions of bonds into stock, totaled $210,000,000. This amount was several times greater than the amount of stock sold in any other year since 1920. Even the Erie, which has never paid a dividend on its common stock, substantially increased the amount of its outstanding stock in 1927 by the exchange of convertible bonds. Among the roads which sold stock were the Baltimore and Ohio, the New York Central, the New Haven, the Canadian Pacific, the Santa Fe, the Frisco, and the Bangor and Aroostook.[3] However, not all the recent financing of railroads has been made possible by improved net earnings. The favorable money market conditions of the past year or two have led many carriers to refund bonded indebtedness at lower rates of interest and have

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[2] Cf. Julius H. Parmelee, "A Review of Railway Operations in 1927," Bureau of Railway Economics, p. 12.

[3] Cf. Charles W. Foss, "Railway Finances in 1927," *Railway Age*, 84:61, Jan. 7, 1928.

made possible in no small measure the sales of railroad stocks.

In the third place, general improvement is noted in the fact that there has been a decline in the number of roads placed in receivership. On December 31, 1927, there were in the hands of receivers only 37 railroad properties, operating a total of 16,622 miles of line. The number of roads in receivership was 5 less than the number at the close of 1926, and the mileage, although it included the 11,025 miles of the Chicago, Milwaukee and St. Paul was less. Had the reorganization of that company been completed, the mileage of roads in the hands of receivers at the end of 1927 would have been the smallest since 1911. In 1927 there were only 6 roads taken over by the courts. This number compared with 2 in 1926, but otherwise, there were only six years since 1876 in which fewer roads went into receivership. Four of the 6 roads were Class I carriers, two of which suffered receivership primarily because of losses due to floods. The number of roads placed in receivership since 1920, and the mileage and bonds and stocks follows:

	Number of roads	Miles	Bonds and stocks[4]
1920	10	541	$21,620,150
1921	14	1,744	63,872,113
1922	12	4,330	329,114,860
1923	10	2,218	87,913,581
1924	11	920	30,223,372
1925	5	11,130	679,679,580
1926	2	40	.....
1927	6	924	45,236,674

It must not be assumed, however, that all the improvement in the condition of railroads since 1920 has been due to the presence in the law of the rule of rate-making. It would be difficult indeed to measure its influence. However, there can be no doubt that section 15a has served as a guiding principle and that it should be retained, if for no other reason than that repeal would represent a backward

[4] *Ibid.*, p. 62.

step and would affect unfavorably the railroad credit situation. But the rule of rate-making can not be retained in the law without the recapture clauses. The situation which those clauses were designed to meet in 1920 is paralleled by a similar situation at the present time. Some of the roads which were below the average in earning power in 1920 may be average roads at present, but there still remains a great disparity of earning power of railroads under uniform rates, so that rates adjusted to the needs of the average carrier would still give to the stronger roads an income which public opinion would not tolerate without recapture. So long as such disparity exists the recapture clauses must be retained.

The recapture clauses need to be amended, however. The funds thus taken from railroads are not public funds in the sense that they should go into the common public treasury. Such funds have been paid by shippers for the maintenance of the transportation system and they should be used in the interests of transportation in general, primarily to aid weak carriers. Under the present law with restrictions placed upon the uses of the general railroad contingent fund moneys weak railroads can not qualify for the use of them. Congress should remove the restrictions upon loans from the general railroad contingent fund and upon leases of such equipment as the Commission might purchase for the use of weak carriers, since as soon as the valuation work shall have been completed there will be available for the uses contemplated in the law considerable sums of recaptured earnings. Lending such moneys, or leasing equipment purchased by them, is essentially an administrative matter. The Commission's hands should not be tied by impractical requirements in the law. Recaptured earnings should be placed at the disposal of the Commission to be used in its discretion for the benefit primarily of weak carriers. Certainly placing such a matter in the hands of the Commission does not constitute the grant of greater powers than it already pos-

sesses with regard to rates and the division of joint rates. It is the general opinion that contingent fund moneys will never be of service to weak carriers if the loans are to be made at six per cent, and with the present requirements as to repayment of loans.

The consolidation provisions of the law should also be amended. Consolidation remains the most satisfactory, and at the same time the most permanent solution of the problems of weak railroads. However, the practical difficulties which experience has shown to lie in the way of consolidation of weak with strong carriers on a large scale defeat too firm reliance upon consolidation as a sole solution; yet the manifest advantages of consolidation to weak carriers, and to shippers who use them, should prompt Congress to facilitate in every reasonable manner the consummation of such consolidations. The Interstate Commerce Commission has pointed the way by which Congress may remove many obstacles by permitting consolidations in various forms to take place under the guidance of the Commission without being subject to a prearranged plan which the Commission has found it difficult, if not impossible, to draw up, and which, if drawn up, might be so impracticable as to become a hindrance rather than an aid to consolidation.

The general structure of regulatory machinery established by the Transportation Act of 1920, with the changes suggested, would be ample to provide for the needs of weak carriers. The division of joint rates in the interests of weak roads, the use of arbitraries, and the acquisition of control of certain weak roads by strong roads have operated with other provisions of the law to help sustain weak carriers since 1920. Weak roads are not in all cases becoming weaker. Some weak roads have grown out of their weakness, and the condition of weak carriers in general has improved, as is evidenced by the decline in the number of roads placed in receivership. Effective recapture clauses and consolidation provisions would add greatly to the machinery

already functioning to preserve the weak carriers. Consolidation should not be forced, but there should be stated in the law a definite policy that when consolidations take place adequate provision for short and weak carriers in the given territory should be made. With attention thus directed to the weak roads and with weak roads having the right to intervene to protect their interests, the further requirement that all consolidations be approved by the Commission should prepare the way for many consolidations which would result in the taking over of weak roads by strong systems.

In summary, the problems of weak railroads are individual problems, demanding individual treatment. The law as it stands provides a framework of regulatory machinery ample, if the parts function properly, to take care of weak carriers. No new devices need to be incorporated into the law, the only changes necessary are those that will cause the various devices already established to function properly. With the Commission exercising powers over the establishment of through routes, the division of joint rates, the application of recaptured earnings to transportation needs in general, and the consolidation of railroads, ample machinery would be provided to preserve essential parts of an adequate transportation system. Furthermore, such machinery would furnish the element of flexibility necessary to deal individually with weak road problems, and to foster the growth and development of a transportation system that must be adapted to changing conditions and must be ever adequate to meet expeditiously and economically the traffic needs of the country.

APPENDIX A

Payments Made by Carriers of One-half of Their Excess Net Railway Operating Income, as Preliminarily Computed under Paragraph (6) of Section 15a of the Interstate Commerce Act Since the Effective Date of Said Act.

Name of Carrier	Year to Which Applicable							
	1920	1921	1922	1923	1924	1925	1926	1927
Ashley, Drew & Northern Ry. Co.	.....	.....	$2,466.29	.....	.....	$3,344.82	.....	.....
Atlantic & Carolina R. R. Co.	.....	.....	.....	.....	.....	.....	$364.57	.....
Augusta Northern Ry.	.....	.....	146.26	$490.87	$3,308.19	1,106.94	18.54	.....
Augusta R. R. Co.	.....	.....	.....	.....	47.83	.....	.....	.....
Bauxite & Northern Ry. Co.	$7,979.03	.....	.....	3,872.69	.....	.....	.....	.....
Bay Terminal R. R. Co.	.....	.....	1,569.98	879.76	.....	.....	.....	.....
Bessemer & Lake Erie R. R. Co.	.....	.....	.....	442,280.00	.....	.....	.....	.....
Birmingham Southern R. R. Co.	.....	.....	31,371.43	.....	.....	.....	.....	.....
Brimstone Railroad & Canal Co.	.....	$5,774.73	21,731.40	15,136.08	.....	.....	.....	.....
Cambria & Indiana R. R. Co.	18,630.46	.....	.....	.....	.....	.....	.....	.....
Campbell's Creek R. R. Co.	.....	548.53	.....	.....	.....	.....	.....	.....
Central Ry. Co. of Arkansas	.....	.....	324.92	.....	.....	.....	.....	.....
Chattahoochee Valley Ry. Co.	.....	.....	.....	.....	.....	16,140.12	.....	.....
Chicago & Illinois Midland Ry. Co.	73,060.16	.....	.....	78,783.94	.....	47,375.65	.....	.....
Chicago, West Pullman & Southern R. R. Co.	.....	.....	.....	5,035.68	.....	.....	.....	.....
Collins & Glenville R. R. Co.	.....	.....	.....	.....	.....	162.50	.....	.....
Cornwall R. R. Co.	65,622.96	.....	22,766.82	45,724.52	.....	.....	1,303.18	.....
Cowlitz, Chehalis & Cascade Ry.	.....	.....	.....	3,000.00	.....	.....	.....	.....
Dayton-Goose Creek Ry. Co.	4,963.20	10,663.64	24,576.68	35,568.80	21,827.03	85,528.03	.....	.....
Dayton Union Ry. Co.	.....	.....	.....	963.81	.....	.....	.....	.....
De Kalb & Western R. R. Co.	.....	.....	.....	.....	.....	10,025.47	.....	.....
Detroit, Toledo & Ironton R. R. Co.	.....	.....	.....	.....	239,461.63	.....	.....	.....

APPENDIX A (Continued)

Payments Made by Carriers of One-half of Their Excess Net Railway Operating Income, as Preliminarily Computed under Paragraph (6) of Section 15a of the Interstate Commerce Act Since the Effective Date of Said Act.

Name of Carrier	Year to Which Applicable							
	1920	1921	1922	1923	1924	1925	1926	1927
Detroit & Toledo Shore Line R. R. Co.	$21,528.88	.....	$31,252.82	.....	.....	.....	$15,229.73	.....
Duluth, Missabe & Northern Ry. Co.	620,000.00	.....	89,000.00	$2,142,000.00	.....	$545,892.85	366,777.60	.....
Durham & Southern Ry. Co.	.....	.....	.....	.....	.....	.....	.....	$22,734.93
East Jersey Railroad & Terminal Co.	.....	.....	3,332.61	.....	.....	.....	.....	.....
East Jordan & Southern R. R. Co.	.....	$4,753.61	.....	.....	.....	.....	.....	.....
Elgin, Joliet & East'n Ry. Co.	.....	.....	.....	55,147.23	.....	.....	.....	.....
Erie & Michigan Ry. & Navigation Co.	.....	.....	2,297.08	.....	.....	.....	.....	.....
Fordyce & Princeton R. R. Co.	.....	3,697.50	.....	.....	.....	.....	.....	.....
Forth Worth Belt Ry. Co.	.....	4,963.37	18,577.74	23,821.07	$19,865.44	12,257.73	.....	.....
Franklin & Abbeville Ry. Co.	.....	3,523.72	11,796.46	.....	.....	.....	.....	.....
Genesee & Wyoming Ry. Co.	46,515.58	55,144.06	100,070.13	65,456.21	61,208.16	58,379.87	47,323.03	20,179.71
Gideon & North Island R. R. Co.	980.71	.....	.....	.....	.....	.....	.....	.....
Hannibal Connecting R. R. Co.	.....	.....	10,619.33	6,913.16	.....	.....	.....	.....
Hutchinson & Northern Ry.	.....	.....	.....	154.25	.....	.....	.....	.....
Indian Creek Valley Ry. Co.	.....	.....	3,852.92	.....	.....	.....	.....	.....
Indiana Northern Ry. Co.	2,140.67	.....	.....	.....	.....	802.25	.....	.....
Ironton R. R. Co.	27,220.43	61,462.41	98,772.94	163,634.97	136,630.16	86,918.25	.....	.....
Johnstown & Stony Creek R. R. Co.	.....	.....	1,162.49	.....	.....	.....	.....	.....
Jonesboro, Lake City & Eastern R. R. Co.	.....	.....	24,920.59	17,529.41	.....	.....	.....	.....
Kanawha, Glen Jean & Eastern R. R. Co.	.....	.....	.....	.....	.....	.....	5,460.88	.....

APPENDIX A (Continued)

Payments Made by Carriers of One-half of Their Excess Net Railway Operating Income, as Preliminarily Computed under Paragraph (6) of Section 15a of the Interstate Commerce Act Since the Effective Date of Said Act.

Name of Carrier	Year to Which Applicable							
	1920	1921	1922	1923	1924	1925	1926	1927
Kinston Carolina R. R. Co.	.....	$62.91	.....	.....	.....	.....	.....	.....
Lakeside & Marblehead R. R. Co.	.....	.....	$271.94	$5,206.51	.....	.....	.....	.....
Lancaster & Chester Ry. Co.	.....	.....	14,760.90	.....	.....	.....	.....	.....
LaSalle & Bureau County R. R. Co.	.....	.....	5,701.72	6,695.90	$6,024.23	.....	.....	.....
Laurinburg & Southern R. R. Co.	.....	2,518.23	.....	.....	.....	.....	.....	.....
Ligonier Valley R. R. Co.	$37,521.23	4,035.60	21,608.44	.....	.....	.....	.....	.....
Longview, Portland & Northern Ry. Co.	.....	.....	.....	.....	.....	.....	$5,310.43	.....
Louisiana & Arkansas Ry. Co.	.....	.....	.....	8,000.02	.....	.....	.....	.....
Louisiana & Miss. R. R. & Transfer Co.	20.03	.....	.....	.....	.....	.....	.....	.....
Ludington & Northern Ry.	38.14	1,448.39	.....	.....	.....	$1,379.03	.....	.....
Middletown & Unionville R. R. Co.	51.71	.....	.....	.....	.....	.....	.....	.....
Missouri & Ill. Bridge & Belt R. R. Co.	.....	.....	.....	3,026.82	.....	.....	.....	.....
Mount Hood R. R. Co.	.....	.....	5,745.04	1,614.79	.....	.....	.....	.....
Mount Hope Mineral R. R. Co.	.....	.....	.....	1,396.84	.....	.....	.....	.....
Natchez, Urania & Ruston Ry. Co.	.....	.....	.....	87.69	.....	.....	.....	.....
Neame, Carson & Southern R. R. Co.	.....	.....	2,120.41	.....	.....	.....	.....	.....
New Orleans, Texas & Mexico Ry. Co.	.....	.....	.....	5,248.35	.....	.....	.....	.....
Phila., Bethlehem & N. E. R. R. Co.	.....	.....	31,147.97	45,353.50	.....	.....	.....	.....

APPENDIX A (Continued)

Payments Made by Carriers of One-Half of Their Excess Net Railway Operating Income, as Preliminarily Computed under Paragraph (6) of Section 15a of the Interstate Commerce Act Since the Effective Date of Said Act.

Name of Carrier	Year to Which Applicable							
	1920	1921	1922	1923	1924	1925	1926	1927
Pittsburgh, Lisbon & Western R. R. Co.	$2,341.50	.....	.....	$1,477.07	.....	.....	.....	.....
Port Huron & Detroit R. R. Co.	.....	.....	$8,685.92	29,669.43	.....	.....	.....	.....
Potato Creek R. R. Co.	.....	.....	1,005.81	.....	.....	.....	.....	.....
Richmond, Fredericksburg & Potomac R. R. Co.	.....	.....	169,343.37	25,576.51	.....	.....	.....	.....
Rockport, Langdon & Northern Ry. Co.	441.10	.....	.....	.....	.....	.....	.....	.....
San Antonio Southern Ry. Co.	2,460.86	.....	.....	.....	.....	.....	.....	.....
San Joaquin & Eastern R. R. Co.	.....	.....	.....	.....	.....	.....	.....	$12,539.03
San Luis Central R. R. Co.	.....	.....	.....	.....	.....	.....	.....	246.12
Santa Maria Valley R. R. Co.	3,500.00	.....	.....	.....	.....	.....	.....	.....
Shreveport, Houston & Gulf R. R. Co.	.....	.....	1,674.27	.....	.....	.....	.....	.....
Sioux City Terminal Ry. Co.	.....	.....	455.78	1,014.63	$3,879.18	.....	.....	.....
South Buffalo Ry. Co.	.....	.....	23,768.50	.....	.....	.....	.....	.....
St. Joseph Belt Ry. Co.	.....	$685.72	1,939.04	.....	.....	.....	.....	.....
Steelton & Highspire R. R. Co.	.....	.....	.....	7,410.21	2,156.98	.....	$9,739.71	.....
Sugar Land Ry. Co.	25,080.30	.....	1,873.72	481.65	.....	.....	.....	.....
Talbotton R. R. Co.	.....	.....	.....	36.56	.....	.....	.....	.....
Tionesta Valley Ry. Co.	.....	13,102.90	7,841.52	.....	.....	.....	.....	.....
Toledo Terminal R. R. Co.	.....	.....	18,337.07	.....	.....	.....	.....	.....
Trinity Valley Southern R. R. Co.	.....	.....	17.65	.....	84.72	.....	.....	.....
Tuckerton R. R. Co.	.....	564.84	.....	.....	.....	$3,549.12	.....	.....

APPENDIX A (Continued)

Payments Made by Carriers of One-half of Their Excess Net Railway Operating Income, as Preliminarily Computed under Paragraph (6) of Section 15a of the Interstate Commerce Act Since the Effective Date of Said Act.

Name of Carrier	Year to Which Applicable							
	1920	1921	1922	1923	1924	1925	1926	1927
Tucson, Cornelia & Gila Bend R. R. Co.	.....	.....	.....	$11,997.34	.....	.....	.....	.....
Tuskegee R. R. Co.	.....	.....	.....	1,016.53	$1,464.37	.....	.....	.....
Unity Railways Co.	$920.86	.....	.....	9,309.77	2,356.33	$35,730.05	$27,613.37	.....
Upper Merion & Plymouth R. R. Co.	.....	.....	.....	.....	.....	...2,984.58	.....	.....
Warren & Ouachita Valley Ry. Co.	.....	$7,339.26	$424.15	6,681.04	.....	.....	.....	.....
Warrenton R. R. Co.	.....	1,909.15	3,496.99	3,302.89	455.87	3,831.78	1,410.51	$4,964.49
Washington, Brandywine & P. L. R. R. Co.	.....	.....	.....	85.19	.....	.....	.....	.....
Washington Run R. R. Co.	.....	411.02	.....	4,548.16	.....	.....	.....	185.65
Wichita Falls & Southern R. R. Co.	.....	.....	.....	.....	369.71	.....	.....	.....
Wyandotte Terminal R. R. Co.	.....	.....	.....	511.52	687.17	.....	.....	.....
TOTAL	$961,017.81	$182,609.59	$820,802.10	$3,286,141.37	$499,827.00	$915,409.04	$480,551.55	$60,849.93

NOTE:—This table has been compiled from the annual reports of the I. C. C. In addition to the amounts in the table the Illinois Terminal R. R. Co. has paid $800,000, undistributed by years.

APPENDIX B

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Period Mar. 1 to Oct. 31, 1920		
Pittsburgh & West Virginia R. R. Co.	West Side Belt R. R. Co.	22.60
St. Louis Southwestern Ry. Co.	Valley Terminal Ry.	.36
Total		22.96
Year Ended Oct. 31, 1921		
Atchison, Topeka & Sante Fe Ry. Co.	California Southern R. R.	49.84
Boston & Albany R. R. Co. (New York Central R. R. Co., lessee)	Providence, Webster & Springfield R. R. Co.	12.26
Chesapeake & Ohio Ry. Co.	Chesapeake & Ohio Northern Ry. Co.	29.81
Chicago, Milwaukee & St. Paul Ry. Co.	Chicago, Terre Haute & Southeastern Ry. Co.	298.09
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.	Evansville, Indianapolis & Terre Haute Ry. Co.	134.15
Maine Central R. R. Co.	Belfast & Moosehead Lake R. R.	33.00
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.	Wisconsin & Northern R. R. Co.	133.58
Mississippi Central R. R. Co.	Gulf, Mobile & Northern R. R. Co.	26.00
Northern Pacific Ry. Co.	Billings & Central Montana Ry. Co.	13.00
Pennsylvania R. R. Co.	Pittsburgh, Fort Wayne & Chicago Ry. Co.	470.20
Pennsylvania R. R. Co.	New York, Philadelphia & Norfolk R. R. Co.	121.57
Pennsylvania R. R. Co.	Cumberland & Martinsburg R. R. Co.	32.73
Pennsylvania R. R. Co.	Perth Amboy & Woodbridge R. R. Co.	6.33
Pennsylvania R. R. Co.	New York Bay R. R. Co.	13.94
Pere Marquette Ry. Co.	Flint Belt R. R. Co.	8.25
Pittsburgh, Shawmut & Nn. R. R. Co.	Rochester, Hornellsville & Lackawanna R. R. Co.	10.38
Texas & No. O. R. R. Co.	Texas State R. R.	32.60
Total		1,426.72
Year Ended Oct. 31, 1922		
Atchison, Topeka & Santa Fe Ry. Co.	Eldorado & Santa Fe Ry. Co.	44.00
Atchison, Topeka & Santa Fe Ry. Co.	Santa Fe & Los Angeles Harbor Ry. Co.	12.54
Atlantic Coast Line R. R. Co.	Rockingham R. R. Co.	21.40
Baltimore & Ohio R. R.	Indian Creek & Northern R. R. Co.	2.60
Chesapeake & Ohio Ry. Co.	Chesapeake & Ohio Ry. Co. of Indiana	260.00

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Chicago, Milwaukee & St. Paul Ry. Co.	Chicago, Milwaukee & Gary Ry. Co.	108.05
Chicago, River & Indiana R. R. Co.	Chicago Junction Ry.	(1)
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. New York Central R. R. Co. New York, Chicago & St. Louis Ry. Co.	Cleveland Union Terminals Co.	(2)
El Paso & Southwestern Co.	Arizona & New Mexico Ry. Co.	108.00
Erie R. R. Co.	New York, Lake Erie & Western Coal & R. R. Co.	46.49
International & Great Northern R. R. Co.	Austin Dam & Suburban Railway Co.	2.55
New York Central R. R. Co.	Chicago River & Indiana R. R. Co.	(3)
New York Central R. R. Co.	Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.	(4)
New York Central R. R. Co.	Toledo & Chicago Central Ry. Co.	395.96
	Kanawha & Michigan Ry. Co.	168.80
New York, Chicago & St. Louis R. R. Co.	Lake Erie & Western R. R. Co.	727.81
Pennsylvania R. R. Co.	Grand Rapids & Indiana Ry. Co.	476.69
Pennsylvania R. R. Co.	Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co.	2,265.61
Pennsylvania R. R. Co. (5)	Cincinnati, Lebanon & Northern Ry. Co.	76.17
Pennsylvania R. R. Co. (5)	Cleveland, Akron & Cincinnati Ry. Co.	335.20
Pennsylvania R. R. Co. (5)	Englewood Connecting Ry. Co.	2.50
Pennsylvania R. R. Co. (5)	Indianapolis & Frankfort R. R. Co.	41.00
Pennsylvania R. R. Co. (5)	Louisville Bridge & Terminal Ry. Co.	4.15
Pennsylvania R. R. Co. (5)	Ohio Connecting Ry. Co.	9.11
Pennsylvania R. R. Co. (5)	Pittsburgh, Ohio Valley & Cincinnati R. R. Co.	15.00
Pennsylvania R. R. Co. (5)	South Chicago & Southern R. R. Co.	23.00
Pennsylvania R. R. Co. (5)	Toledo, Columbus & Ohio River R. R. Co.	345.00
Pennsylvania R. R. Co. (5)	Wheeling Terminal Ry. Co.	10.00
Pittsburgh & West Virginia Ry. Co.	West Side Belt R. R. Co.	22.63

(1) Terminal company, 23.73 miles of track.

(2) To be constructed.

(3) Terminal company, 18.49 miles of track.

(4) No mileage shown for the reason that the N. Y. Central only is granted further control, it having obtained control prior to the effective date of the Transportation Act of 1920.

(5) Amendatory order No. 82-347.

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Union Pacific R. R. Co.	Saratoga & Encampment Ry. Co.	44.77
Virginia Ry. Co.	Virginia & Western Ry. Co.	14.45
Total		5,583.48
Year Ended Oct. 31, 1923		
Atchison, Topeka & Santa Fe Ry. Co.	Dodge City & Cimarron Valley Ry. Co.	174.00
Atchison, Topeka & Santa Fe Ry. Co.	Osage County & Santa Fe Ry. Co.	35.20
Atchison, Topeka & Santa Fe Ry. Co.	Rio Grande, El Paso & Santa Fe R. R. Co.	20.22
Delaware, Lackawanna & Western R. R. Co.	Sussex R. R. Co.	30.55
Gulf, Mobile & Northern R. R. Co.	Meridian & Memphis R. R. Co.	33.00
Illinois Central R. R. Co.	Chicago, Memphis & Gulf R. R. Co.	48.53
Illinois Central R. R. Co.	Chicago, St. Louis & New Orleans R. R. Co.	133.31
Illinois Central R. R. Co.	Chicago, St. Louis & New Orleans R. R. Co.	42.10
Illinois Central R. R. Co.	Southern Illinois & Kentucky R. R. Co.	123.70
Louisville & Nashville R. R. Co.	Black Mountain R. R. Co.	8.29
Pennsylvania R. R. Co.	Pennsylvania-Detroit R. R. Co.	28.94
St. Louis-San Francisco Ry. Co.	Miami Mineral Belt R. R. Co.	14.14
St. Louis-San Francisco Ry. Co.	Valley Terminal Co.	(6)
Southern Pacific Co.	Central Pacific Ry. Co.	3,325.06
Wabash Ry. Co.	Missouri, Kansas & Texas R. R. Co. (Hannibal to Moberly, Mo.)	69.75
Wisconsin Central Ry. Co. and Minneapolis	Stanley, Merrill & Phillips Ry. Co. (Polley to Vallee, Wis.)	22.06
Total		4,009.95
Year Ended Oct. 31, 1924		
Atchison, Topeka & Santa Fe Ry. Co.	California Southern R. R. Co.	49.85
Atchison, Topeka & Santa Fe Ry. Co.	Grand Canyon Ry. Co.	63.56
Atchison, Topeka & Santa Fe Ry. Co.	Oklahoma Central R. R. Co.	135.00
Atchison, Topeka & Santa Fe Ry. Co.	Rocky Mountain & Santa Fe Ry. Co.	9.30
Atchison, Topeka & Santa Fe Ry. Co.	Salina & Santa Fe Ry. Co.	81.00

(6) Terminal company, 15 miles of yard tracks.

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Atlantic Coast Line R. R. Co. and Louisville & Nashville R. R. Co.	Carolina, Clinchfield & Ohio Ry. Carolina, Clinchfield & Ohio Ry. of S. C. Clinchfield Northern Ry. of Kentucky	276.85
Chicago, Rock Island & Pacific Ry. Co.	Keokuk & Des Moines Ry. Co.	162.28
Colorado & Southern Ry. Co.	Wichita Falls & Oklahoma R. R. Co. of Okla.	7.50
Denver & Rio Grande Western R. R. Co.	Rio Grande Junction Ry. Co. and Rio Grande and Southwestern R. R. Co.	96.00
El Paso & Southwestern Co.	Dawson R. R. Co. El Paso & Rock Island Ry. Co. El Paso & Northeastern Ry. Co. Almagordo & Sacramento Mountain Ry. Co. El Paso & Northeastern R. R. Co.	460.17
El Paso & Southwestern R. R. Co.	Dawson Ry. Co. El Paso & Rock Island Ry. Co. El Paso & Northeastern Ry. Co. Alamagordo & Sacramento Mountain Ry. Co. El Paso & Northeastern R. R. Co. Burro Mountain R. R. Co. Arizona & New Mexico Ry. Co.	585.34
El Paso & Southwestern R. R. Co.	Dawson Ry. Co. El Paso & Rock Island Ry. Co. El Paso & Northeastern Ry. Co. Alamagordo & Sacramento Mountain R. R. Co. El Paso & Northeastern R. R. Co. El Paso & Southwestern R. R. Co. of Texas	464.86
Georgia & Florida Ry.	Statesboro Northern Ry.	40.00
Gulf, Colorado & Santa Fe Ry. Co.	Concho, San Saba & Llano Valley R. R. Co.	59.65
Gulf, Colorado & Santa Fe Ry. Co.	Pecos & Northern Texas Ry. Co.	85.00
Kansas City, Kaw Valley & Western Ry. Co.	Kansas & Missouri Railway & Terminal Co.	6.34
Kansas City Southern Ry. Co.	Kansas & Missouri Railway & Termina. Co.	6.34
Lehigh Valley R. R. Co.	Delaware, Susquehanna & Schuylkill R. R. Co.	45.00
Lehigh Valley R. R. Co., and Reading Co.	Ironton R. R. Co.	12.06

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Missouri Pacific R. R. Co.	Denver & Rio Grande Western R. R. Co.	2,604.00
Missouri Pacific R. R. Co.	Texas and Pacific Ry. Co.	1,647.84
Morgan's Louisiana & Texas Railroad & Steamship Co.	Franklin & Abbeville Ry. Co.	40.085
New Orleans, Texas & Mexico Ry. Co.	Houston & Brazos Valley Ry.	28.48
New Orleans, Texas & Mexico Ry. Co.	International & Great Northern R. R. Co.	1,159.50
New York, Ontario & Western Ry. Co.	Utica, Clinton & Binghamton R. R. Co. and Rome & Clinton R. R. Co.	45.00
Oklahoma City-Ada-Atoka Ry. Co.	Missouri, Kansas & Texas R. R. Co.	13.56
Oklahoma City-Ada-Atoka Ry. Co.	Oklahoma City Shawnee Interurban Ry. Co.	38.00
Panhandle & Santa Fe Ry. Co.	Pecos & Northern Texas Ry. Co.	485.00
St. Louis-San Francisco Ry. Co. and Kansas City, Fort Scott & Memphis Ry. Co.	Kansas City, Clinton & Springfield Ry. Co.	155.00
Seaboard Air Line Ry. Co.	Florida Western & Northern R. R. Co.	239.00
St. Louis Southwestern Ry. Co. of Texas	Stephenville North & South Texas Ry. Co.	105.18
Southern Pacific Co.	Arizona Eastern R. R. Co., and Phoenix & Eastern R. R. Co.	362.00
Southern Pacific Co.	El Paso Southwestern System	1,139.87
Total		10,928.615
Period Nov. 1, 1924, to Aug. 31, 1925		
Atchison, Topeka & Santa Fe Ry. Co.	Elkhart & Santa Fe Ry. Co.	(7) 56.00
Atlantic Coast Line R. R. Co.	Moore Haven & Clewiston Ry. Co.	14.00
Baltimore, Chesapeake & Atlantic Ry. Co.	Baltimore & Eastern R. R. Co.	40.00
Chesapeake & Ohio Ry. Co.	Sandy Valley & Elkhorn Ry. Co.	31.00
Chesapeake & Ohio Ry. Co.	Ashland Coal & Coke Ry. Co.	27.66
Chesapeake & Ohio Ry. Co.	Long Fork Ry. Co.	36.31
Chesapeake & Ohio Ry. Co.	Millers Creek R. R. Co.	4.53
Chicago, Rock Island & Pacific Ry. Co.	Keokuk & Des Moines R. R. Co.	167.00
Edw. Hines Yellow Pine, trustees	Gulf & Ship Island	16.00
Southern Pacific Co.	San Antonio & Arkansas Pass. Ry. Co.	729.00
Galveston, Harrisburg & San Antonio Ry. Co.	San Antonio & Arkansas Pass. Ry. Co.	
Illinois Central R. R. Co.	Gulf & Ship Island R. R. Co.	307.56

(7) To be constructed.

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Kansas City Southern Ry. Co.	Kansas & Missouri Railway & Terminal Co.	(8)
Maine Central R. R. Co.	Hereford Ry. Co.	52.85
Missouri Pacific R. R. Co.	New Orleans, Texas & Mexico Ry. Co.	(9) 900.00
Monongahela Ry. Co.	Scotts Run Ry. Co.	23.70
Monongahela Connecting R. R. Co.	Eastern R. R. Co.	0.57
New York Central R. R. Co.	Hudson River Connecting R. R. Corporation	(10)
Norfolk & Western Ry. Co.	Buck Creek R. R. Co.	1.24
Southern Pacific Co.	Lake Tahoe Railway & Transportation Co.	16.50
Stewartston R. R. Co.	New Park & Fawn Grove R. R.	7.20
Western Pacific Ry. Co.	Sacramento Northern Ry.	165.03
Total		2,596.15
Period Sept. 1 to Sept. 30, 1925		
Buffalo, Rochester & Pittsburgh Ry. Co.	Rural Valley R. R.	11.70
Lehigh Valley R. R. Co. and Reading Co.	Ironton R. R. Co.	12.06
Los Angeles Junction Ry. Co.	Central Manufacturing District (Inc.)	7.20
Monongahela Ry. Co.	Monongahela & Ohio R. R.	2.50
St. Louis-San Francisco Ry. Co.	Jonesboro, Lake City & Eastern R. R. Co.	86.50
St. Louis-Southwestern Ry. Co. of Texas	Stephenville North & South Texas Ry. Co.	105.18
Terminal R. R. Association of St. Louis	St. Louis Merchants Bridge Terminal Ry. Co, East St. Louis Connecting Ry. Co., St. Louis Transfer Ry. Co.	27.76
Total		252.90
Period Oct. 1, 1925, to Sept. 30, 1926		
Atchison, Topeka & Santa Fe Ry. Co.	Rocky Mountain & Santa Fe Ry. Co.	100.58
Atchison, Topeka & Santa Fe Ry. Co.	Fresno Interurban Ry. Co.	17.50
Atchison, Topeka & Santa Fe Ry. Co.	Garden City, Gulf & Northern Ry. Co.	38.00
Atchison, Topeka & Santa Fe Ry. Co.	New Mexico Central Ry. Co.	116.00
Atchison, Topeka & Santa Fe Ry. Co.	Corona & Santa Fe Ry. Co.	15.00

(8) Terminal. About 6.34 miles of track.

(9) Represents approximate mileage of N. O. T. & M. and certain subsidiaries.

(10) To be constructed. Bridge across Hudson River near Albany, and about 157 miles of all tracks, mostly yard tracks and sidings.

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Atchison, Topeka & Santa Fe Ry. Co.	Healdton & Santa Fe Ry. Co.	36.00
Atchison, Topeka & Santa Fe Ry. Co. and Western Pacific R. R. Co.	Alameda Belt Line	3.96
Baltimore & Ohio R. R. Co.	Cincinnati, Indianapolis & Western R. R. Co.	308.63
Baltimore & Ohio R. R. Co.	Dayton & Union R. R. Co.	31.94
Baltimore & Ohio R. R. Co.	Hamilton Belt Ry. Co.	2.94
Canadian Pacific Ry. Co.	Connecticut & Passumpsic Rivers R. R. Co.	69.00
Chesapeake & Ohio Ry. Co.	Island Creek R. R. Co.	5.43
Chesapeake & Ohio Ry. Co.	Pond Fork & Bald Knob R. R. Co.	13.10
Chicago & Illinois Midland Ry. Co.	Springfield, Havana & Peoria Ry. Co.	77.02
Chicago & North Western Ry. Co.	Chicago, St. Paul, Minneapolis & Omaha Ry. Co.	1,749.19
Gulf, Colorado & Santa Fe Ry. Co.	Oklahoma, New Mexico & Pacific Ry. Co. and Ringling & Oil Fields Ry. Co.	36.00
Gulf, Mobile & Northern R. R. Co.	Jackson & Eastern Ry. Co.	33.00
Inland Waterways Corporation	Warrior River Terminal Co.	18.00
Kansas City Southern Ry. Co.	Texarkana & Fort Smith Ry. Co.	105.00
Kansas City Southern Ry. Co.	Kansas City & Grandview Ry. Co.	13.48
Louisville & Nashville R. R. Co.	Cumberland & Manchester R. R. Co.	25.59
Missouri, Kansas & Texas R. R. Co., New Orleans, Texas & Mexico Ry. Co., and Atchison, Topeka & Santa Fe Ry. Co.	Texas City Terminal Ry. Co.	6.38
Missouri Pacific R. R. Co.	Marion & Eastern R. R. Co.	10.00
New Orleans, Texas & Mexico Ry. Co.	Asherton & Gulf Ry. Co. Rio Grande City Ry. Co. Sugar Land Ry. Co.	93.04
New Orleans, Texas & Mexico Ry. Co.	San Antonio, Ulvalde & Gulf R. R. Co.	315.58
New York Central R. R. Co.	Hudson River Connecting R. R. Co.	26.50
New York Central R. R. Co.	Bailey Run, Sugar Creek & Athens Ry. Co.	3.60
Panhandle & Santa Fe Ry.	South Plains & Santa Fe Ry. Co.	166.46
Pennsylvania Railroad Co.	Western Allegheny R. R. Co.	47.89
Pennsylvania Railroad Co.	St. Louis Connecting R. R. Co.	9.20
Pennsylvania Railroad Co.	Pennsylvania, Ohio & Detroit R. R. Co.	793.00
Pittsburgh & West Virginia Ry. Co.	West Side Belt R. R. Co.	22.63

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
St. Louis-San Francisco Ry. Co.	Muscle Shoals, Birmingham & Pensacola R. R.	159.03
Seaboard Air Line Ry. Co.	Charlotte Harbor & Northern Ry. Co.	95.36
Seaboard Air Line Ry. Co.	Tavares & Gulf R. R. Co.	33.95
Seaboard Air Line Ry. Co.	Brooksville & Inverness Ry.	18.74
Seaboard Air Line Ry. Co.	Tampa Northern R. R. Co.	58.87
Seaboard Air Line Ry. Co.	Seaboard-All Florida Ry.	194.00
Seaboard-All Florida Ry.	East & West Coast Ry. Co. & Fla. W. & N. R. R. Co.	286.00
Southern Pacific Co.	East & West Coast Ry. Co. & Fla. W. & N. R. R. Co.	286.00
Southern Pacific Co.	Holton Inter-Urban Ry. Co.	10.477
Southern Pacific Co.	Dayton-Goose Creek R. R. Co.	25.14
Southern Pacific Co.	Nevada-California-Oregon Ry.	154.63
Southern Pacific Co.	Oregon, California & Eastern Ry. Co.	40.00
Texas & New Orleans R. R. Co.	Dayton-Goose Creek R. R. Co.	25.14
Utah Ry. Co.	National Coal Ry. Co.	8.50
Wabash Ry. Co.	Ann Arbor R. R. Co.	293.70
Yazoo & Mississippi Valley R. R. Co.	Alabama & Vicksburg Ry. Co. and Vicksburg, Shreveport & Pacific Ry. Co.	329.00
Total		6,328.177
Period Oct. 1, 1926, to Sept. 30, 1927		
Allegheny & Western Ry. Co. and Buffalo, Rochester & Pittsburgh Ry. Co.	Allegheny Terminal Co.	0.12
Atchison, Topeka & Santa Fe Ry. Co.	California, Arizona & Santa Fe Ry. Co.	15.00
Atlantic Coast Line R. R. Co.	Atlanta, Birmingham & Coast R. R. Co.	640.00
Atlantic Coast Line R. R. Co.	Columbia, Newberry & Laurens R. R. Co.	75.00
Atlantic Coast Line R. R. Co.	Washington & Vandemere R. R. Co.	40.90
Baltimore & Ohio R. R. Co.	Cheat Haven & Bruceton R. R. Co.	6.50
Baltimore & Ohio R. R. Co.	Cincinnati, Indianapolis & Western R. R.	308.63
Baltimore & Ohio R. R. Co.	Indian Creek Valley Ry. Co.	27.00
Beaumont, Sour Lake & Western Ry. Co.	Houston North Shore Ry. Co.	26.00
Canadian Pacific Ry. Co. and Maine Central R. R. Co.	St. Johnsbury & Lake Champlain R. R. Co.	22.00
Chartiers Southern Ry. Co.	Pennsylvania R. R. Co.	6.97

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Chesapeake & Ohio Ry. Co.	Chesapeake & Hocking Ry. Co.	63.00
Chesapeake & Ohio Ry. Co.	Island Creek R. R. Co.	15.00
Chesapeake & Ohio Ry. Co.	Sewell Valley R. R. Co.	32.28
Chesapeake & Ohio Ry. Co.	Loop and Lookout R. R. Co.	18.97
Chicago & Eastern Illinois Ry. Co.	Chicago Heights Terminal Transfer R. R. Co.	22.93
Chicago, Rock Island & Pacific Ry. Co.	Peoria Terminal Co.	7.69
Colorado & Southern Ry. Co.	Fort Worth & Denver South Plains Ry. Co.	202.00
Denver & Rio Grande Western R. R. Co.	Goshen Valley R. R. Co.	9.05
Denver & Salt Lake City Ry. Co.	Northwestern Terminal R. R. Co.	7.83
Detroit, Grand Haven & Milwaukee Ry. Co.	Grand Rapids Terminal R. R. Co.	1.507
Fort Worth & Denver City Ry. Co.	Fort Worth & Denver South Plains Ry. Co.	202.00
Georgia & Florida R. R. or R. Lancaster Williams	Statesboro Northern Ry.	40.00
Grand Trunk Western Ry. Co. and Toledo, Saginaw & Muskegon R. C	Muskegon Ry. and Navigation Co,	4.83
Gulf, Colorado & Santa Fe Ry. Co.	Gulf & Interstate Ry. Co. of Texas	75.84
Gulf, Colorado & Santa Fe Ry. Co.	Gulf, Beaumont & Great Northern Ry. Co.	77.78
Gulf, Colorado & Santa Fe Ry. Co.	Gulf, Beaumont & Kansas City Ry. Co.	62.59
Gulf, Mobile & Northern R. R. Co.	Birmingham & Northwestern Ry. Co.	49.50
Gulf, Mobile & Northern R. R. Co.	Jackson & Eastern Ry. Co.	33.00
Missouri Pacific R. R. Co.	Marion & Eastern R. R. Co.	10.00
Missouri Pacific R. R. Co.	New Orleans & Lower Coast R. R. Co.	59.70
Monongahela Ry. Co.	Baltimore & Ohio R. R. Co.	6.12
Monongahela Ry. Co.	Chartiers Southern Ry. Co.	12.94
Monongahela Ry. Co.	Indian Creek & Northern Railway Co.	2.60
Monongahela Ry. Co.	Pennsylvania R. R. Co.	6.97
New Orleans, Texas & Mexico Ry.	San Antonio Southern Ry. Co.	38.72
New York Central R. R. Co.	Middleport & Northeastern Ry. Co.	2.50
New York, New Haven & Hartford R. R. Co.	Hartford & Connecticut Western R. R. Co.	122.24
Panhandle & Santa Fe Ry. Co.	Pecos River R. R. Co.	54.27
St. Louis-San Francisco Ry. Co.	Butler County R. R. Co.	49.52
St. Louis-San Francisco Ry. Co.	St. Louis, Kennett & Southeastern R. R. Co.	16.94
St. Louis Southwestern Ry. Co. of Texas	Stephenville North & South Texas Ry. Co.	105.18

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Seaboard Air Line Ry. Co.	Jacksonville, Gainesville & Gulf Ry.	56.00
Seaboard Air Line Ry. Co.	Naples, Seaboard & Gulf Ry. Co.	19.00
Seaboard Air Line Ry. Co.	Tampa & Gulf Coast R. R. Co.	78.27
Seaboard Air Line Ry. Co.	Gainesville Midland R. R. Co.	38.00
Southern Pacific Co.	Central California Traction Co.	55.00
Tennessee & North Carolina Ry. Co.	Smoky Mountain R. R.	27.80
Texas & New Orleans R. R. Co.	Southern Pacific subsidiaries in Texas and Louisiana	3,945.35
Texas & Pacific Ry. Co.	Abilene & Southern Ry. Co.	96.79
Texas & Pacific Ry. Co.	Cisco & Northeastern Ry. Co.	28.20
Texas & Pacific Ry. Co.	Pecos Valley Southern Ry. Co.	40.40
Tionesta Valley Ry. Co.	Clarion River Ry. Co.	12.00
Wichita Falls & Southern R. R. Co.	Wichita Falls & Southern Ry. Co.	52.36
Wichita Falls & Southern R. R. Co.	Wichita Falls, Ranger & Fort Worth R. R. Co.	74.80
Total mileage		7,105.587
Period Oct. 1, 1927 to Sept. 30, 1928		
Atchison, Topeka & Santa Fe Ry. Co.	Kansas City, Mexico & Orient Ry. Co.	272.00
Atchison, Topeka & Santa Fe Ry. Co. and Panhandle & Santa Fe Ry. Co.	Clinton & Okla. Western R. R. Co. and Clinton-Oklahoma-Western R. R. Co. of Texas	143.00
Baltimore & Ohio R. R. Co. et al.	Cincinnati Union Terminal Co.	19.34
Central R. R. Co. of N. J.	Hibernia Mine R. R. Co.	4.28
Chesapeake & Ohio Ry. Co.	Greenbrier & Eastern R. R. Co.	10.95
Chesapeake & Ohio Ry. Co.	Pere Marquette Ry. Co.	2,286.13
Cincinnati, New Orleans & Tex. Pac. Ry. Co.	Cincinnati Southern Ry.	335.76
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.	Louisville & Jeffersonville Bridge & R. R. Co.	4.12
Delaware & Hudson Co.	Ticonderoga R. R. Co.	1.39
Gainesville Midland R. R. Co.	Athens Terminal Co.	1.61
Great Northern Ry. Co.	Oregon, California & Eastern Ry. Co.	50.00
Gulf, Colorado & Santa Fe Ry. Co.	Texas & Gulf Ry. Co.	95.83
Illinois Terminal Co.	St. Louis, Troy & Eastern R. R. Co., St. Louis & Illinois Belt Ry., St. Louis Electrical Terminal Ry. Co., Illinois Traction (Inc.)	458.00

APPENDIX B (Continued)

Authorizations of Control of One Carrier by Another Carrier Under Paragraph (2) of Section 5 of the Interstate Commerce Act Since the Effective Date of the Act

Carrier Acquiring Control	Owning Company	Miles of Road
Kansas City, Mexico & Orient Ry. Co.	Kansas City, Mexico & Orient Ry. Co. of Texas	467.00
Kansas, Oklahoma & Gulf Ry. Co.	Kansas, Okla. & Gulf Ry. Co. of Texas	9.00
Kansas City Southern Ry. Co.	Kansas City & Grand View Ry. Co.	13.24
Michigan Central R. R. Co.	Detroit Manufactures R. R.	4.53
Missouri Pacific R. R. Co.	Chester & Mount Vernon R. R. Co.	64.83
New York Central R. R. Co.	Raquette Lake Ry.	18.13
New York Central R. R. Co. and Baltimore & Ohio R. R. Co.	Nicholas, Fayette & Greenbrier R. R. Co.	29.00
Pennsylvania R. R. Co.	Baltimore & Eastern R. R. Co.	38.17
Pennsylvania R. R. Co.	Columbus & Xenia R. R. Co.	52.22
Pennsylvania R. R. Co.	Pennsylvania Tunnel & Terminal R. R. Co.	13.68
Reading Co.	Port Reading R. R. Co.	19.71
Seaboard Air Line Ry. Co.	Georgia, Florida & Alabama R. R. Co.	192.00
Seaboard Air Line Ry. Co.	Naples, Seaboard & Gulf Ry. Co.	20.65
Southern Pac. Co. and Texas & New Orleans R. R. Co.	Texas Midland R. R.	125.20
Texas & Pacific Ry. Co.	Texas-New Mexico Ry. Co.	38.50
Union Pacific R. R. Co.	Saratoga & Encampment Valley R. R. Co.	44.77
Western Maryland Ry. Co.	Chesapeake & Curtis Bay R. R. Co.	2.05
Western Maryland Ry. Co.	Greenbrier, Cheat & Elk R. R. Co.	39.00
Total mileage		4,874.09
Grand total mileage since March 1, 1920		43,129.00

NOTE:—This table has been compiled from annual reports of the I. C. C., and from testimony given in Hearings on H. R. 5641, Seventieth Congress, 1st Session pp. 232-9.

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